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The following opinions, decisions, judgments, and orders have been omitted in printing the joint appendix because they appear as appendices to the petitions for certiorari. They appear in the appendix to the petition in Case No. 15-1503 as follows:

Appendix A: D.C. Court of Appeals opinion, June 11, 2015 ..... 1a

Appendix B: D.C. Court of Appeals order, January 14, 2016..... 79a

Appendix C: Superior Court of the District of Columbia opinion, August 6, 2012 ..... 81a

DISTRICT OF COLUMBIA
COURT OF APPEALS

12-CO-1362

CHARLES S. TURNER

v.

UNITED STATES

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
8/7/12	Notice Of Appeal
9/6/12	Initial Order
10/12/12	Order Sua Sponte Consolidating Appeals nos. 12-co-1538, 12-co-1539, 12-co-1540, 12-co-1541, 12-co-1542 and 12-co-1543 with appeal no. 12-co-1362 for all purposes, assigning counsel, appointing counsels, denying as moot appellant's motion in appeal no. 12-co-1540 to appoint counsel and directing the art within 30 days from the date of this order
	* * * * *
11/7/12	Ordered that counsel for appellant in appeal no. 12-C0-1362, shall within 15 days from the date of this order submit the statement regarding transcript, accompanied by a motion for leave to file out of time
	* * * * *

11/9/12	Consolidated Statement Regarding Transcript(s) (for all) (rt ordered/needed) de
11/13/12	Answer/Response to the Court's November 7, 2012 order w/attachments (Appellant - Turner)
11/14/12	Answer/Response to in support of Charles Turner's response to the Court's order of November 7, 2012 (Joint response) (Appellant)
	* * * * *
1/7/13	Record Copies (12-C0-1362)
1/7/13	Record Copies (12-C0-1362)
	* * * * *
1/11/13	Supplemental Record - #1 (Trial Court pleadings) –SEALED
	* * * * *
1/11/13	Record Completed
1/17/13	Record Copies (12-C0-1543)
1/17/13	Record Index (12-C0-1543)
1/24/13	Record Copies {12-C0-1540)
1/24/13	Record Index (12-C0-1540)
2/1/13	Briefing Order
2/27/13	Motion For Extension Of Time to File Appendix, Brief (ALL Appellants) (Joint motion)
3/25/13	GRANT - Order Granting appellants' motion for an extension of time to file the brief and limited appendixes on or before May 13, 2013

4/26/13	Motion To File Excess-Paged Brief (Appellant)
	* * * * *
5/13/13	Brief (Appellant - Smith)
5/13/13	Brief (Appellant-Christopher Turner)
5/13/13	Motion to file certain portions of the appendix under seal (All Appellants)
5/13/13	Brief (Charles Turner, Levy Rouse, Clifton Yarborough, Timothy Catlett) (Appellant)
5/13/13	Motion for extension of time to file amicus briefs (Joint Appellants)
5/13/13	Brief (Appellant-Overton)
6/4/13	Motion To Appear Pro Hac Vice (Amicus-Appellant The Innocence Network)
6/7/13	Motion For Extension Of Time to File Brief (Appellee)
6/13/13	GRANT - Order Granting appellants' motion for an extension of time to file the lodged amicus curiae briefs of Former Law Enforcement Officers, Howard University School of Law criminal justice clinic & civil rights clinic, the false confessor exonerees, former judges and prosecutors, the innocence network, and national assoication of criminal defense lawyers, in support of appellants, graning appellants' motion to file certain portions of the appendix under seal, and granting the motion of Robert B. Humphreys, Esquire, for admission pro hac vice, and the lodged appendix in support of brief of the false confessor exonerees, and granting appellee's motion for an extension

	of time to file the brief on or before September 24, 2013
6/13/13	Brief (Amicus-Appellant The Innocence Network)
6/13/13	Brief (Amicus-Appellant Former Judges and Prosecutors)
6/13/13	Appendix (Volumes I - X)(On behalf of all Appellants) (with eight CDs attached) (Appellant) *****SEALED******
6/13/13	Brief (Amicus-Appellant Howard University School of Law Criminal Justice Clinic)
6/13/13	Brief (Amicus-Appellant The False Confessor Exonerees)
6/13/13	Appendix in support of brief of the False Confessor Exonerees (Amicus-Appellant)
6/13/13	Brief (Amicus Curiae) (National Association of Criminal Defense Lawyers) (appellant)de
6/13/13	Brief (Amicus Curiae Former Law Enforcement Officers) (appellant)de
9/19/13	Motion For Extension Of Time to File Brief (Appellee)
9/30/13	GRANT - Order Granting appellee's motion for an extension of time to file the brief on or before October 24, 2013
	* * * * *
10/22/13	Motion For Extension Of Time to File Brief (Appellee)
10/28/13	GRANT - Order Granting appellee's motion for an extension of time to file the brief on or before November 7, 2013

11/7/13	Motion To File Excess-Paged (Appellee)
	* * * * *
11/19/13	Motion For Extension Of Time to File Reply Brief (Appellant)
11/20/13	ORDER GRANTING APPELLEE'S MOTION and the CLERK SHALL FILE the LODGED BRIEF and GRANTING APPELLANTS' MOTION and the REPLY BRIEF SHALLD BE FILED BY 1/15/14
11/20/13	Brief (Appellee)
	* * * * *
12/4/13	Letter To Counsel/Party Re Future Calendaring
1/8/14	Motion To File Excess-Paged Reply Brief (All Appellants)
	* * * * *
1/16/14	ORDER GRANTING MOTION TO EXCEED the PAGE LIMITS and the CLERK SHALL FILE the lodged REPLY BRIEFS
1/16/14	Reply Brief (Charles Turner, C. Yarborough, L. Rouse, T. Catlett) (Appellant)
1/16/14	Reply Brief (Kelvin D. Smith) (Appellant)
1/16/14	Reply Brief (Russell L. Overton) (Appellant)
1/16/14	Reply Brief (Turner) (Appellant)
	* * * * *
3/24/14	Corrected Motion that oral argument in this matter be heard last (All Appellants)

4/7/14	Order Granting aplts' motion for argument to be heard last.
4/11/14	Order directing response.
4/18/14	Answer/Response to 4/11/14 order of the Court. (Appellant)
4/21/14	Answer/Response concerning length and format of oral argument (Appellee)
4/21/14	Rule 28(k) Citation Of Supplemental Authority (Appellee)
4/24/14	Order re: oral argument presentation (45 minutes each side).
4/29/14	Argued Before Associate Judges Glickman, and Blackburne-Rigsby, and Senior Judge Nebeker. (John S. Williams Esq,. for appellant Clifton F. Yarborough) (Kevin D. Feder Esq.,for appellant Russell L. Overton) (Nicholas P. Coleman Esq.,for appellee).
	* * * * *
6/11/15	Affirmed (OPINION) (Glickman and Blackbume-Rigsby, Associate Judges; and Nebeker, Senior Judge)
	* * * * *
6/12/15	Motion For Extension Of Time to File petition for rehearing (Overton, Rouse, Yarborough Smith Catlett) Other (Appellant)
6/17/15	Ordered that the motion is granted and appellant's petitions for rehearing shall be filed on or before July 15, 2015.
7/15/15	Petition For Rehearing/Rehearing En Banc (Appellant)

7/15/15	Petition For Rehearing/Rehearing En Banc (Christopher D. Turner Joinder of Russell Overton's petition) (Appellant)
7/15/15	Petition For Rehearing/Rehearing En Banc (Russell Overton) (Appellant)
	* * * * *
8/14/15	Ordered that appellee, within 14 days from the date of this order, shall file a response (ten copies) thereto.
8/24/15	Motion For Extension Of Time to File Brief (Appellee)
8/28/15	Ordered that the motion is granted and appellee's response to petition for rehearing or rehearing en banc shall be filed on or before September 28, 2015.
9/23/15	Change Of Address Received From Attorney Berstein & Turner
	* * * * *
1/14/16	Order Denying appellants Yarborough, Smith, Rouse, Turner, Turner, and Catlett's petition for rehearing or rehearing en banc.
1/14/16	Order Denying appellants Overton and Turner's petition for rehearing or rehearing en banc.
1/28/16	Mandate (12-CO-1362)
6/20/16	Copy/Notice Of Petition For Writ Of Certiorari (Appellant-Turner)
6/20/16	Copy/Notice Of Petition For Writ Of Certiorari (Appellant-Overton)

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

F-8513-84

UNITED STATES

v.

TURNER, CHARLES

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
8/7/12	Appeal Package Filed
8/7/12	Notice of Appeal Filed By Defense Attorney: WICKS, Ms JENIFER (465476)
8/6/12	Order denying defendant's motion to vacate his convictions or in the alternative for a new trial pursuant to D.C. Code §§ 22-4135 and 23-110 signed by Judge Weisberg, entered on docket, and copies mailed to all parties 8/6/12. cmc
6/11/12	Order granting government's unopposed motion for an extension of time to file its proposed findings of fact and conclusions of law and giving the government until June 15, 2012 to file its response signed by Judge Weisberg, entered on docket, and copies mailed to all parties 6/8/12. CMC

6/8/12 Government's Unopposed Motion for an Extention of Time to File Its Proposed Findings of Fact and Conclusions of Law Attorney: OKUN, Mr ROBERT D D (457078)

5/15/12 Exhibit List Filed Exhibit Summary Sent on: 05/15/2012 16:12:33.91

5/15/12 Event Resulted - Release Status: personal recognizance; government completed closing statements; defense rebutted; briefing scheduled for 6/8/12; AUSA Sweeney and Weston; court reporter Jules Jeon. The following event: Post Disposition Motion Hearing scheduled for 05/15/2012 at 9:30 am has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf of CHARLES TURNER (Defendant (Criminal)); Judge FREDERICK H WEISBERG

* * * * *

5/14/12 Event Resulted - Release Status: personal recognizance; defense gave closing statements; government closing statement continued; AUSA Sweeney and Weston; court reporter Jules Jeon. The following event: Post Disposition Motion Hearing scheduled for 05/14/2012 at 9:30 am has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf of

CHARLES TURNER (Defendant (Criminal)); Judge FREDERICK H WEISBERG

* * * * *

5/11/12 Event Resulted - Release Status: personal recognizance; government case in chief completed; defense rebuttal; AUSA Sweeney and Weston; court reporter Gercha White. The following event: Post Disposition Motion Hearing scheduled for 05/11/2012 at 9:30 am has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf of CHARLES TURNER (Defendant (Criminal)); Judge FREDERICK H WEISBERG

* * * * *

5/10/12 Event Resulted - Release Status: personal recognizance; defendant's absence was excused by the court; government case in chief continued; AUSA Sweeney and Weston; court reporter Susan Walker. The following event: Post Disposition Motion Hearing scheduled for 05/10/2012 at 9:30 am has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf of CHARLES TURNER Participant(s): Judge FREDERICK H WEISBERG

* * * * *

5/9/12 Event Resulted - Release Status: personal recognizance; government case in chief continued; AUSA Sweeney and Weston; court reporter Rachel Lopez. The following event: Post Disposition Motion Hearing scheduled for 05/09/2012 at 9:30 am has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf of CHARLES TURNER (Defendant (Criminal)); Judge FREDERICK H WEISBERG

* * * * *

5/8/12 Event Resulted - Release Status: personal recognizance; government case in chief continued; AUSA Sweeney and W on; court reporter Kellie Humiston. The following event: Post Disposition Motion Hearing scheduled for 05/08/2012 at 10:30 am has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf of CHARLES TURNER (Defendant (Criminal)); Judge FREDERICK H WEISBERG

* * * * *

5/7/12 Event Resulted - Release Status: personal recognizance; government case in chief continued; AUSA Sweeney and Weston; court reporter Kellie Humiston. The following event: Post Disposition Motion Hearing scheduled for 05/07/2012 at

1:00 pm has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf of CHARLES TURNER (Defendant (Criminal)); Judge FREDERICK H WEISBERG

* * * * *

5/3/12 Event Resulted - Release Status: personal recognizance; government case in chief continued; AUSA Sweeney and Weston; court reporter Katy Zamora. The following event: Post Disposition Motion Hearing scheduled for 05/03/2012 at 9:30 am has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf of CHARLES TURNER (Defendant (Criminal)); Judge FREDERICK H WEISBERG

* * * * *

5/2/12 Event Resulted - Release Status: personal recognizance; defense case in chief and rests; government case in chief continued; AUSA Sweeney, Kennedy and Weston; court reporter Barbara DeVico. The following event: Post Disposition Motion Hearing scheduled for 05/02/2012 at 9:30 am has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf

of CHARLES TURNER (Defendant (Criminal)); Judge FREDERICK H WEISBERG

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5/1/12 Event Resulted - Release Status: personal recognizance; defense case in chief continued; AUSA Sweeney, Weston, and Kennedy; court reporter Donna Hawkins. The following event: Post Disposition Motion Hearing scheduled for 05/01/2012 at 9:30 am has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf of CHARLES TURNER (Defendant (Criminal)); Judge FREDERICK H WEISBERG

* * * * *

4/30/12 Event Resulted - Release Status: personal recognizance; defense case in chief continued; AUSA James Sweeney and Kacie Weston; court reporter Jackie Wood. The following event: Post Disposition Motion Hearing scheduled for 04/30/2012 at 9:30 am has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf of CHARLES TURNER (Defendant (Criminal)); Judge FREDERICK H WEISBERG

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4/27/12 Event Resulted - Release Status: PR; defense case in chief continued; AUSA

Sweeney, Weston and Kennedy (a.m.); court reporter Terri Etekochay. The following event: Post Disposition Motion Hearing scheduled for 04/27/2012 at 9:30 am has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf of CHARLES TURNER (Defendant (Criminal)); Judge FREDERICK H WEISBERG

* * * * *

4/26/12 Event Resulted - Release Status: personal recognizance; defense case in chief continued; AUSA Sweeney and Weston; court reporter Okeemah Henderson. The following event: Post Disposition Motion Hearing scheduled for 04/26/2012 at 2:00 pm has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf of CHARLES TURNER (Defendant (Criminal)); Judge FREDERICK H WEISBERG

* * * * *

4/25/12 Event Resulted - Release Status: personal recognizance; defense case in chief continues; AUSA Sweeney and Weston; court reporter Okeemah Henderson. The following event: Post Disposition Motion Hearing scheduled for 04/25/2012 at 9:30 am has been resulted as follows: Result: Hearing Held Judge: WEISBERG,

FREDERICK H Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf of CHARLES TURNER (Defendant (Criminal)); Judge FREDERICK H WEISBERG

* * * * *

4/24/12 Event Resulted - Release Status: personal recognizance; defense case in chief continues; court reporter Mahalia Davis; AUSA Sweeney, Kennedy, and Weston. The following event: Post Disposition Motion Hearing scheduled for 04/24/2012 at 9:30 am has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf of CHARLES TURNER (Defendant (Criminal)); Judge FREDERICK H WEISBERG

* * * * *

4/23/12 Event Resulted - Release Status: personal recognizance; opening statements given by both parties; defense case in chief continues; court reporter Kristin Gilliam. The following event: Post Disposition Motion Hearing scheduled for 04/23/2012 at 2:00 pm has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf of CHARLES TURNER (Defendant (Criminal)); Judge FREDERICK H WEISBERG

* * * * *

3/9/12 Event Resulted - Release Status: personal recognizance; case continued for post disposition motion hearing previously scheduled. The following event: After Sentencing Hearing scheduled for 03/09/2012 at 12:00 pm has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf of CHARLES TURNER (Defendant (Criminal)); Judge FREDERICK H WEISBERG

* * * * *

2/13/12 Order requiring parties to exchange witness lists and identify expert witnesses by 3/9/12 and to premark, exchange and stipulate to the admissibility of all exhibits before 4/23/12 signed by Judge Weisberg, entered on docket, and copies mailed to all parties 2/13/12. CMC

* * * * *

9/26/11 Order Granting defendant's Motion for Disclosure of Grand Jury Material signed by Judge Weisberg, entered on the Docket, and copies mailed to all parties 9/26/11. CMC

9/19/11 Joint proposed order for DNA testing signed by Judge Weisberg entered on docket and copies mailed to all parties 9/19/11. CMC

9/19/11 Event Resulted - Release Status: personal recognizance; motion hearing scheduled; defendant refused to sign notice to return

to court; AUSA Weston and Sweeney. The following event: After Sentencing Hearing scheduled for 09/19/2011 at 2:00 pm has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf of CHARLES TURNER (Defendant (Criminal)); Judge FREDERICK H WEISBERG

* * * * *

9/19/11 Event Resulted - Release Status: The following event: After Sentencing Hearing scheduled for 04/23/2012 at 2:00 pm has been resulted as follows: Result: Event Scheduled In Error Judge: WEISBERG, FREDERICK H Location: Courtroom 202

* * * * *

9/8/11 Event Resulted - Release Status: N/a. The court addresses Atty D'Antuono's motion to withdraw. Court also addresses the matter concerning witnesses that haven't been writ. Government counsel addresses disclosures of experts. Motion on the Yarborough matter is addressed and denied without prejudice. Motion for autopsy is granted and defense counsel to provide protection order for autopsy information. Defense counsel addresses discovery issue, but court does not rule on the matter. The following event: After Sentencing Hearing scheduled for 09/08/2011 at 2:00 pm has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H

Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf of CHARLES TURNER (Defendant (Criminal)); Judge FREDERICK H WEISBERG

* * * * *

7/5/11	Order granting Protective Order signed by Judge Weisberg, mailed to parties, and entered on the docket on 7/5/11. ESC
7/1/11	Government's Unopposed Motion for Protective Order Regarding Certain Crime Scene Photographs Attorney: MACHEN, Mr RONALD C (447889)
6/23/11	Order granting Motion to Disclose and Protective Order signed by Judge Weisberg, mailed to parties, and entered on the docket on 6/23/11. ESC
6/20/11	Government's Unopposed Motion for Authorization to Disclose Records and for Protective Orders Attorney: OKUN, Mr ROBERT D D (457078)
5/25/11	Joint Order for DNA Testing signed by Judge Weisberg, mailed to parties, and entered on the docket on 5/25/11.
5/25/11	Protective Orders, granting "Government's Unopposed Motion for Orders Authorizing Disclosure of Discovery Related Documents and for Protective Orders" and authorizing disclosure, signed by Judge Weisberg, mailed to parties, and entered on the docket on 5/25/11. ESC
5/20/11	Government's Unopposed Motion for Orders Authorizing Disclosure of Discovery

Related Documents and for Protective Orders Filed. Attorney: SWEENEY, Mr JAMES S (427217)

* * * * *

5/18/11 Event Resulted - Release Status: N/A. AUSA Sweeney and Restin were present. Hearing held to discuss discovery issues. The following event: After Sentencing Hearing scheduled for 05/18/2011 at 2:00 pm has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H Location: Courtroom 202 Participant(s): Judge FREDERICK H WEISBERG

5/3/11 Government's Notice of Withdrawal of Its Motion to Compel Discovery Attorney: SWEENEY, Mr JAMES S (427217)

5/3/11 Order Granting In Part Defendants' Motion for DNA Testing signed by Judge Weisberg, mailed to parties, and entered on docket on 5/3/11. ESC

4/29/11 United States' response to Defendants' Motions for discovery and for Disclosure of Grand Jury Material Attorney: MACHEN, Mr RONALD C C (447889)

4/21/11 United States' Response to Defendants' Motion for Post-Conviction DNA Testing, Pursuant to D.C. Code 22-4133 and Rule 6(A) of the Rules Governing D.C. Code 23-110 Procedures Attorney: OKUN, Mr ROBERT D D (457078)

4/7/11 Event Resulted - Release Status: N/A. Hearing held, continued for further hearing. The following event: After Sentencing Hearing scheduled for 04/07/2011 at 2:00 pm has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf of CHARLES TURNER Participant(s): Judge FREDERICK H WEISBERG

* * * * *

4/5/11 Government's Motion to Compel Discovery Attorney: SWEENEY, Mr JAMES S (427217)

3/7/11 Protective Order signed by Judge Weisberg on 3/4/11, and mailed to parties and entered on the docket on 3/7/11. ESC

3/1/11 Government's Motion for a Protective Order Attorney: SNOW, Ms MARY A (379757)

1/13/11 Event Resulted - Release Status: : N/A, defense counsel present, case continued for further hearing. The following event: After Sentencing Hearing scheduled for 01/13/2011 at 2:00 pm has been resulted as follows: Result: Hearing Held Judge: WEISBERG, FREDERICK H Location: Courtroom 202 CHARLES TURNER (Defendant (Criminal)); ; Ms JENIFER WICKS (Attorney) on behalf of CHARLES TURNER Participant(s): Judge FREDERICK H WEISBERG

* * * * *

1/8/11	Event Resulted - Release Status: The following event: Status Hearing scheduled for 01/13/2011 at 2:00 pm has been resulted as follows: Result: Hearing Vacated Judge: WEISBERG, FREDERICK H Location: Courtroom 202

* * * * *

12/15/10	Case Transferred to Another Judge The judge was changed from RIGSBY, ROBERT R to WEISBERG, FREDERICK H
12/15/10	Order certifying the case to Judge Frederick H. Weisberg. Entered on the Docket and mailed 12/15/10. mcd
11/12/10	Order Denying Defendant's "Authorities in Support of Request for Presence of Mr. Turner at Status Hearing" Entered on the Docket Signed by Judge Robert R. Rigsby on 11/12/10. Docketed and sent from chambers on 11/12/10. sna

* * * * *

10/4/10	Case Transferred to Another Judge The judge was changed from SCOTT, ROBERT M to RIGSBY, ROBERT R
9/13/10	Motion for Discovery Attorney: WICKS, Ms JENIFER (465476)
9/13/10	Motion to Vacate Conviction and Dismiss with Prejudice or in the Alternative for a New Trial Attorney: WICKS, Ms JENIFER (465476)

8/23/10	Attorney Appointed Attorney WICKS, Ms JENIFER representing Defendant (Criminal) TURNER, CHARLES as of 08/23/2010
2/26/92	Judgment and Commitment Order
1/24/92	JUDGE: SCOTT , ROBERT DEFENSE ATTY: , COMMENT: AN APPEAL THAT WAS FILED ON APR 13,90 WAS AFFIRMED ON 1/24/92
2/4/86	Judgment and Commitment Order

[EXCERPTS FROM JOINT EXHIBIT 2 FROM POST-CONVICTION PROCEEDING]

* * *

Statements: 8th and H Crew

* * *

Clayton Coleman – Said that he came from school 3:30, that he filled out an application for a job or Marriott, read the paper, got dressed, went to Murray Steak for his mother. It was just before dark or getting dark. He saw Eddie Davis and Juan Wigfall coming or appeared to be coming out of Reggie Lucas' house. They started going toward 9th & I, there he saw them meet Sharon Sinclair. He heard Sharon Sinclair say, "No, No". She kind of looked shocked and then she went toward her house. Eddie and Warren went down toward H Street down 9th. He caught up with them and was told by them that there was a body in the alley in Russell's old garage. He entered the (garage) the alley, went toward the garage at about time the police were arriving, he remembered a female police officer. He got into the garage he says, just before the police officer did when Russell's sister, we think Jackie Tiley, pointed the police officer, (to the police officer) where the body was and he said that he saw the body lying in the corner. After that the police had everybody get out of the alley. He went to Murray's Steak with Eddie & Warren. Later saw Warren & Eddie on the Brooks' porch right off the alley. He also said that he saw two people in the alley say something to Jackie Tiley. He couldn't tell whether she said anything back to them. He thought he might be able to recognize one of them. He looked thru the photos as people he knew but did see anyone in the photographs he recognize as being one of the people he saw in the alley.

8/23/10	Attorney Appointed Attorney WICKS, Ms JENIFER representing Defendant (Criminal) TURNER, CHARLES as of 08/23/2010
2/26/92	Judgment and Commitment Order
1/24/92	JUDGE: SCOTT , ROBERT DEFENSE ATTY: , COMMENT: AN APPEAL THAT WAS FILED ON APR 13,90 WAS AFFIRMED ON 1/24/92
2/4/86	Judgment and Commitment Order

[EXCERPTS FROM JOINT EXHIBIT 2 FROM POST-CONVICTION PROCEEDING]

* * *

Statements: 8th and H Crew

* * *

Clayton Coleman – Said that he came from school 3:30, that he filled out an application for a job or Marriott, read the paper, got dressed, went to Murray Steak for his mother. It was just before dark or getting dark. He saw Eddie Davis and Juan Wigfall coming or appeared to be coming out of Reggie Lucas' house. They started going toward 9th & I, there he saw them meet Sharon Sinclair. He heard Sharon Sinclair say, "No, No". She kind of looked shocked and then she went toward her house. Eddie and Warren went down toward H Street down 9th. He caught up with them and was told by them that there was a body in the alley in Russell's old garage. He entered the (garage) the alley, went toward the garage at about time the police were arriving, he remembered a female police officer. He got into the garage he says, just before the police officer did when Russell's sister, we think Jackie Tiley, pointed the police officer, (to the police officer) where the body was and he said that he saw the body lying in the corner. After that the police had everybody get out of the alley. He went to Murray's Steak with Eddie & Warren. Later saw Warren & Eddie on the Brooks' porch right off the alley. He also said that he saw two people in the alley say something to Jackie Tiley. He couldn't tell whether she said anything back to them. He thought he might be able to recognize one of them. He looked thru the photos as people he knew but did see anyone in the photographs he recognize as being one of the people he saw in the alley.

* * *

Samuel Edwards – Drinking with Watts and Luchie, etc. Does not recall this particular day. Goes to Drink w/ them alot. Leaves at 6pm usually.

* * *

William Freeman, II – Worked with James Robinson (the vendor on the corner ofs 8th & H). Was working that day. Gave a statement to the police later on. He is the one who went back to go to the bathroom and discovered Mrs. Fuller's body. Told us that afterwards he came back out of the alley, told Mr. Robinson and Jackie Tylie (who was also with Mr. Robinson) about what he'd seen. Jackie and Mr. Robinson went back into the alley or about five minutes, both came out, Jackie called the police and said they telephone across the street from the bank. Later, moments later Jackie and William Freeman went back into the alley to wait for the police and when they went back there just at about the same time the police arrived, they saw two young men who when they approached, ran back from, in the direction that they were coming, which was down the alley toward "I" Street. Mr. Freeman looked at the photo album and identified a number of pictures as people that he had seen and knew. Specifically, he identified the picture of James McMullian as the person, (one of the people he saw in the alley), and a second picture of Gerald Merkeson as the second person he'd seen in the alley. That's Merkeson . . . M-e-r-k-e-r-s-o-n? (Response – Yeah). All the other pictures he knows a lot of them or he'd seen a lot of them he said, but didn't recall seeing anybody out there that day. He has not worked in the area that long, in fact this was his first week, might have been his first couple of days working at that stand.

* * *

Willie Lucci – Jackie Watts' niece said he was staying with his sister, Jackie's mother, and that that evening, evening of the murder, Toochie, whoes real name is Ronald Murphy, came over, and he, Toochie, Jackie Watts and Michael Jackson their brother-in-law, went to buy some liquor. He knows it was 5:00 or 5:30 because that's when Toochie gets off work. They walked throught the alley from 9th Street toward 8th Street and on the way to Family Liquors, and as they passed the garage he said that he heard several groans. He remembers the doors to the garage being closed. They bought the liquor at Family's, stayed in the park for a while, heard about the murder at their house later on.

* * *

Ronald Murphy – Is someone who was with Jackie Watts, and a number of other people, Willie [illegible]ie, Sam Edwards, Mike Jackson. They, at about 5:30-5:45 went through the alley pass the garage and heard some kind of moaning but didn't look in the garage. They went to the liquor store, pass back through the alley, didn't hear anything. Ronald Murphy is also the person who bought Mrs. Fuller's ring from some unidentified guy for $5 outside of Friendly Liquor Store on H Street. He has not been shown any photographs.

Kay Porter – Originally Kay Porter was said to have heard Calvin Alston's statements to Carey Ellerbe. The night that Carey came in and talk to the detectives admitted that she also heard the conversation. When she came in to talk to us she told us that she knew Snotrag, that she'd heard several conversations with "Snotrag", two that she can recall specifically in which she asked his him whether he killed the lady, and he admitted to her that Levi killed the lady and

stuck the pole up the lady; that he and Hollywood just kicked her. The day she came in to talk to us she admitted to detective Sanchez, and myself that she did not recall being in the car and hearing Calvin Alston say anything about the killing or a robbery, but said that she did hear a conversation somewhere where someone admitted taking money but not necessarily having anything to do with this case. She didn't know why Carey Ellerbe put her in this thing but she just went alone with what Carey said.

* * *

Charnita Speed – Is a friend of James McMillian's. She said was home from school at about 3:15, took a nap. Some time around 6:00 she went to People's to buy some personal items. She passed by the vendor (who she calls "Boss Man") on the corner os 8th & H, and overheard a young lady, Jackie Tylie, telling "Boss Man" about finding a body in the alley. Were talking about finding a body in the alley, and she went with "Boss Man" into the alley. Saw him go into the garage, saw the body. Came out, heard him tell Jackie Tylie to go call the police. Waited for awhile. At some point she went into People's before the police arrived. When she came out, she saw Juan Wigfall walking toward 8th Street toward from 9th Street. She told him about the body in the alley. He didn't believe her. Together they went back into the alley. The police were arriving from the other side and she says that she saw at that time 2 people coming from I Street. She identified one of them as James McMillian, who she knows very well and picked the picture out of the photo book saying, "that, that's the dudes that was with him. The picture is a picture of Gerald Merkeson, #16 in the photo book. She says she started to call out to James but didn't say anything. He ran off as soon as he saw the police were

arriving. He appared to be putting something under his shirt or under his shirt ... or under ... or appeared to have something under his coat and his friend appeared to be stuffing some papers under his shirt. She saw James later on but she didn't talk to him about it.

* * *

Jackie Tylie – Ms. Tylie was with the vendors when they discovered the body and said that she went back with "Boss Man" to see the body and later went back with Mr. Freeman to see the body. On the way back with Mr. Freeman, she recalls seeing James McMillian whom she knew and also ... she also says that she saw Charles Sinclair and Sharon Sinclair. We need to bring her back as to times. And she recall seeing some people leave the alley and split up. Mentions a few names, but includes a lot of people no one else has mentioned being a part of the group. We need to bring her back in and straighten that out.

* * *

Jacqueline Watts – Ms. Watts along with Willie Lucci, Ronald Murphy, Michael Jackson and Samuel Edwards walked through the alley to go to the Liquor Store the day of the murder and Jackie Watts is the one who heard some moans, but they didn't look in the garage. She also is the person that Ronald Murphy bought the ring for and is the one who called the police and told them that she had one of Mrs. Fuller's rings. She knew that it might be one of Mrs. Fuller's rings after Mrs. Fuller's sister came and looked at it.

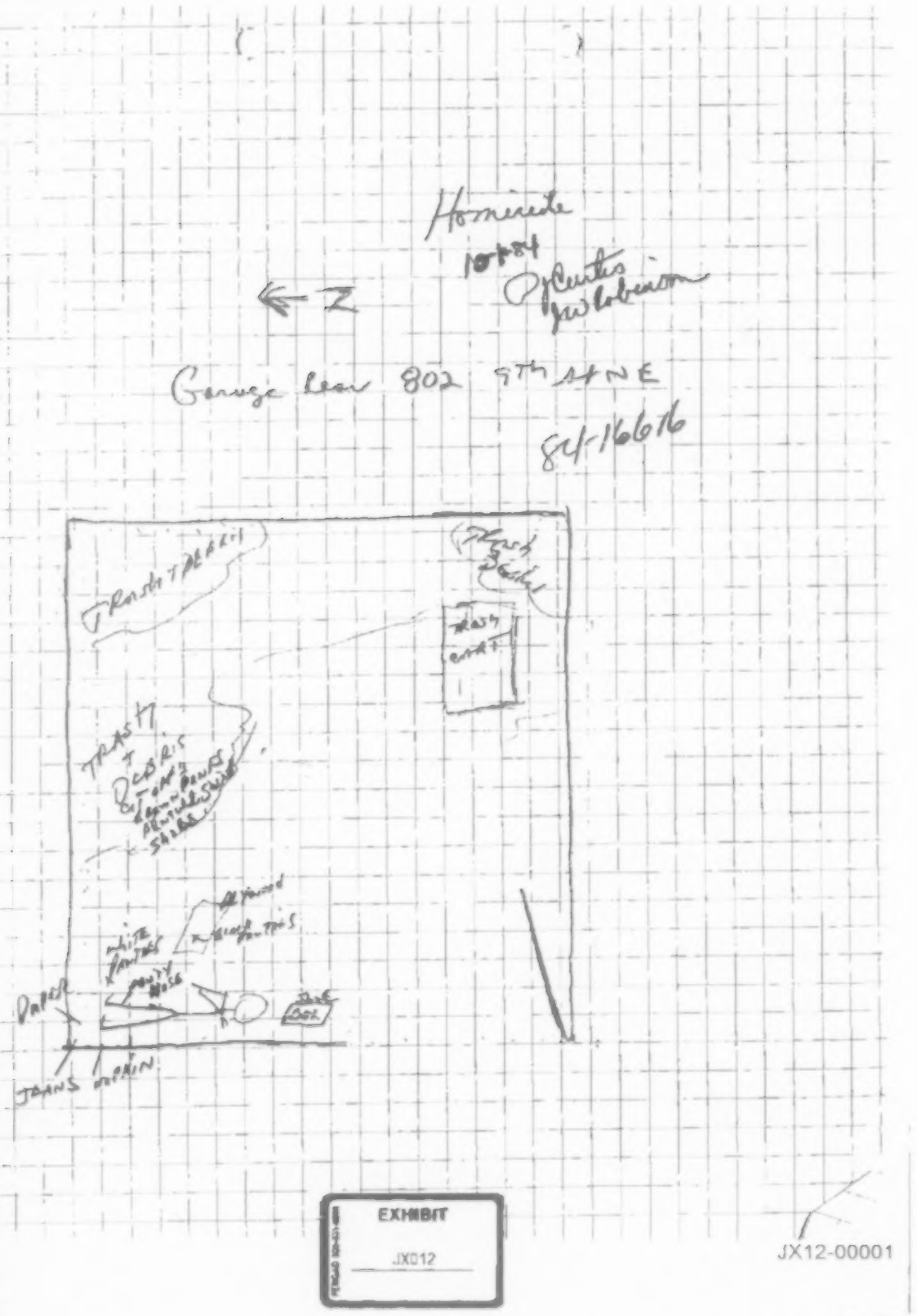
* * *

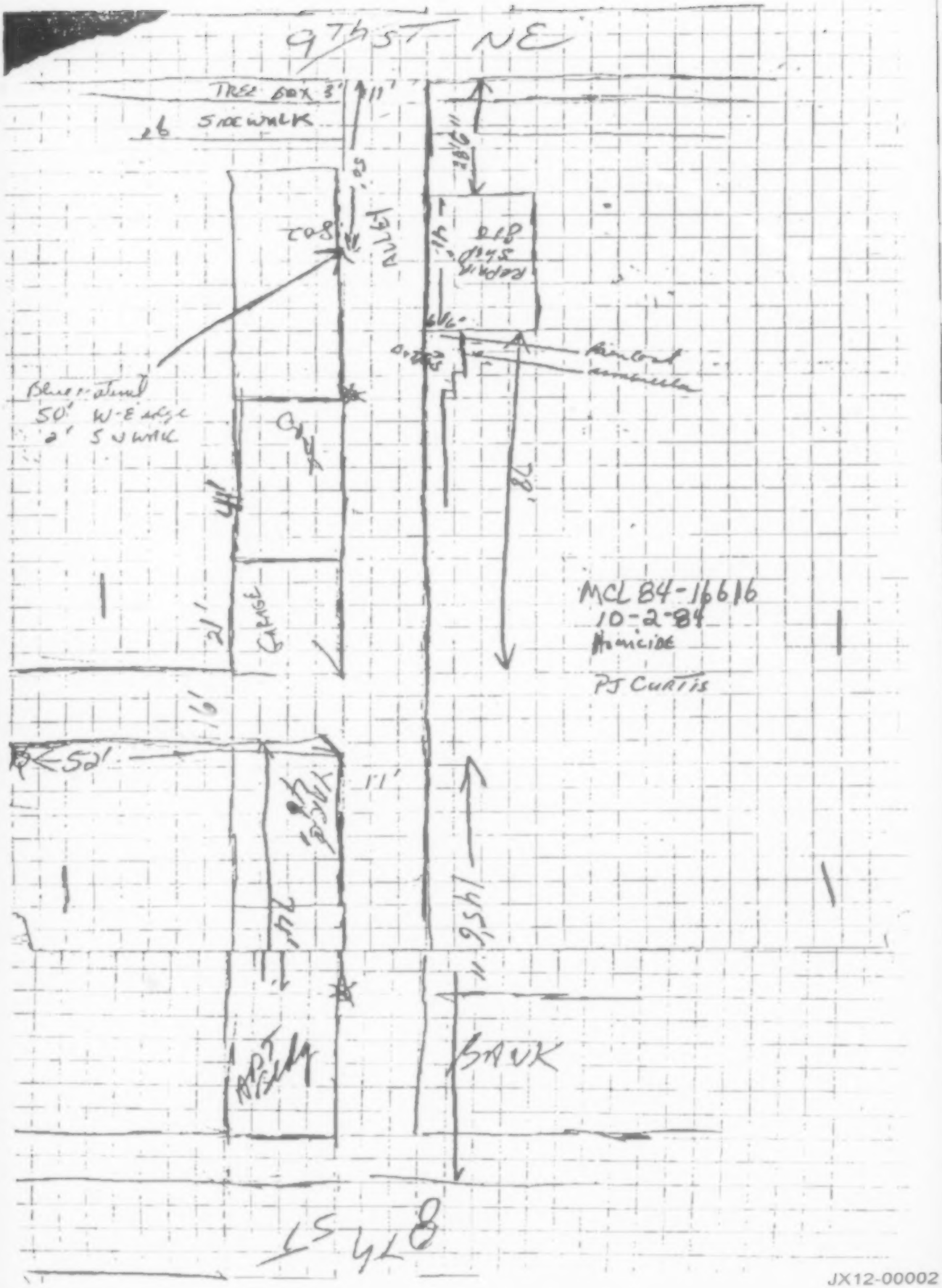
James McMillian – James McMillian was identified by Charnita Speed, a girlfriend of his, as being present in

the alley just when the police arrived, acting suspiciously, having something under his coat. We never talked to James McMillain because his lawyer said he didn't want to talk to us, wouldn't talk to us. He was being sentenced at the time, and we may still bring him up.

* * *

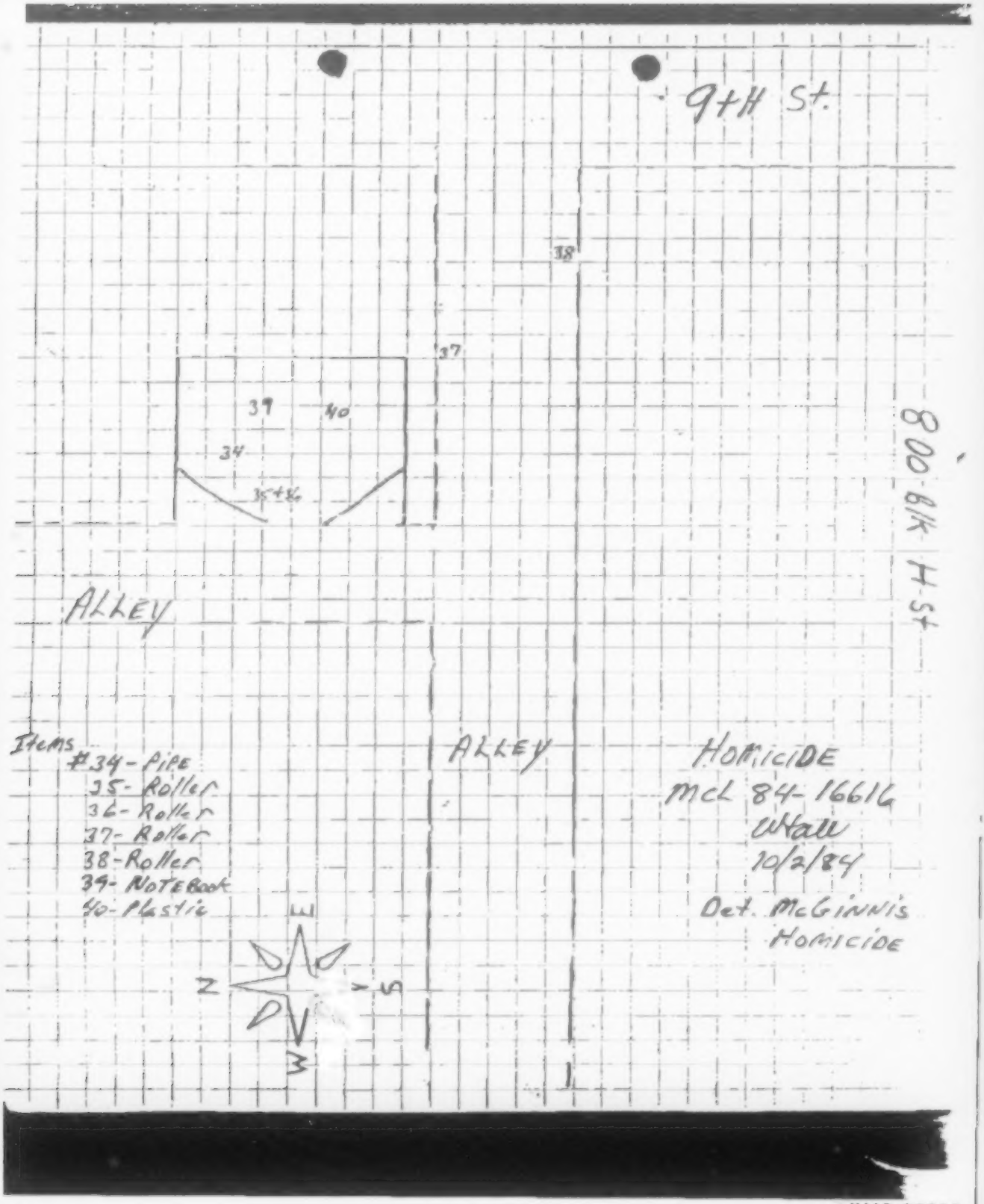
K St NE
K St NE
K St NE
Catherine Fuller House
923
7th St NE
8th St NE
9th St NE
10th St NE
I St NE
I St NE
7th St NE
8th St NE
9th St NE
10th St NE
802
Family Liquor Store
H St NE
H St NE
H St NE
8th & H STREET
PARK
EXHIBIT
JX010


Homicide
10-84
Curtis Jackson
N
Garage door 802 9TH ST NE
84-16616
EXHIBIT
JX012
JX12-00001



JX12-00002

A1188



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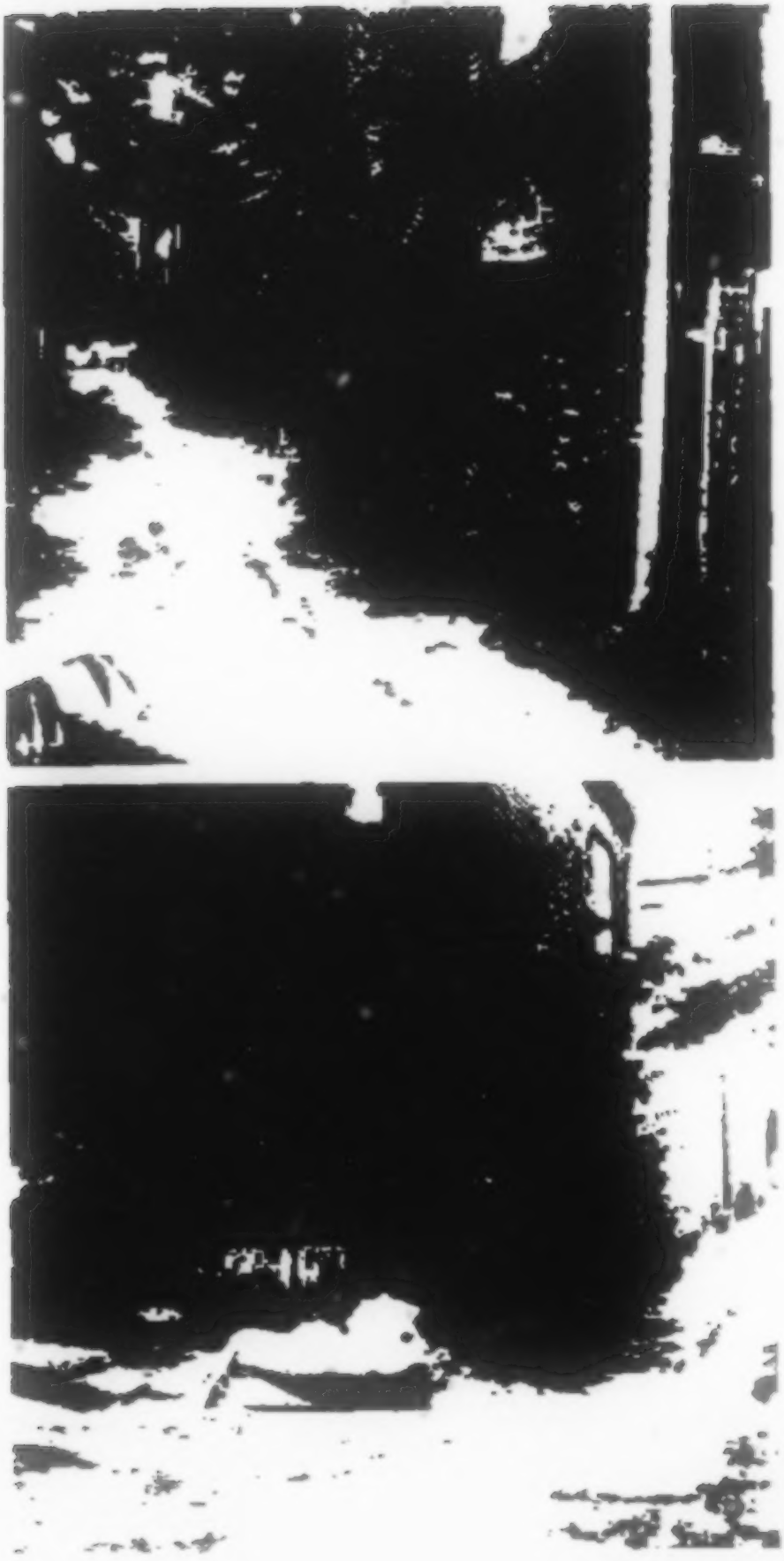
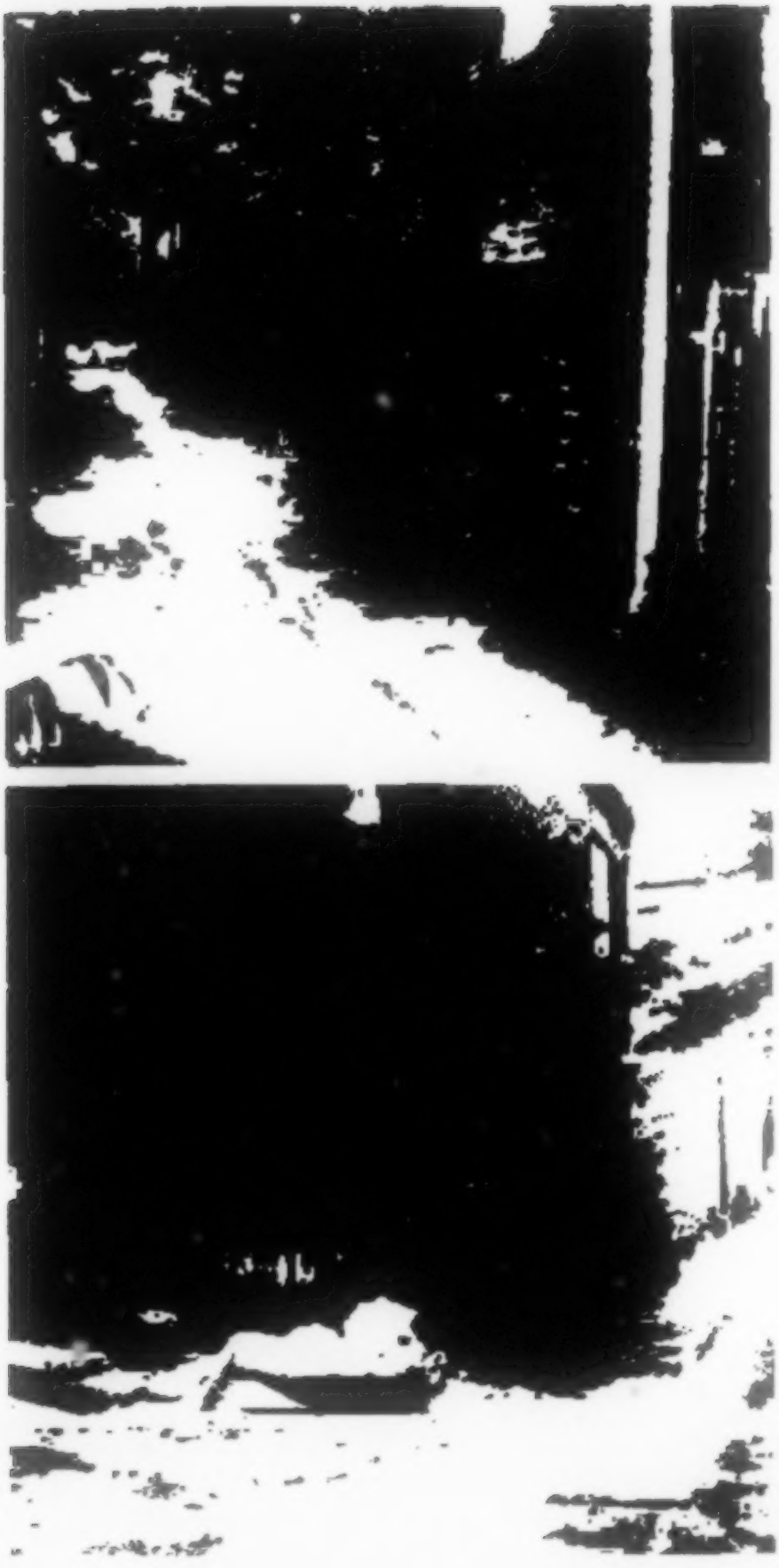
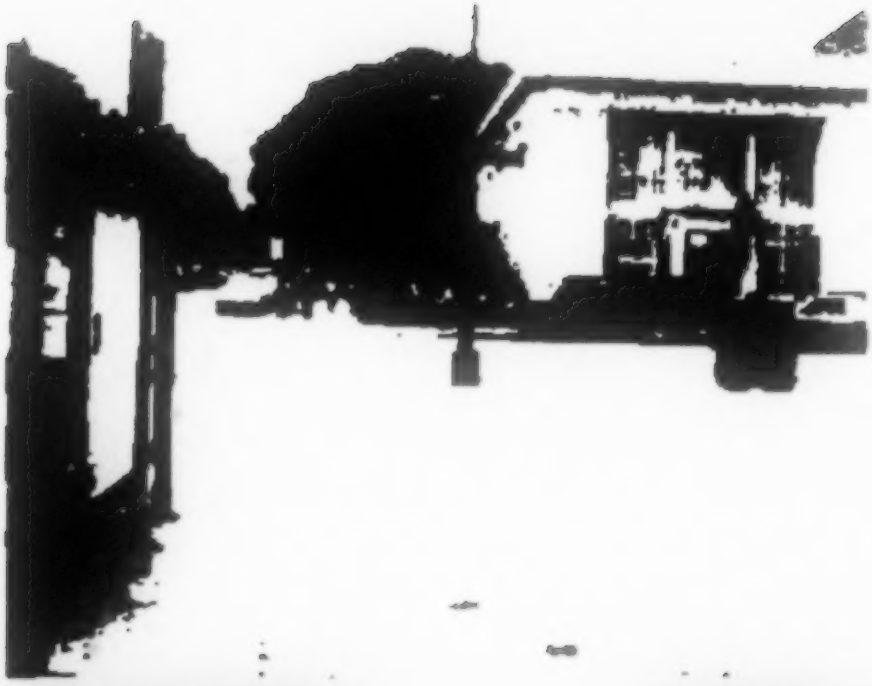
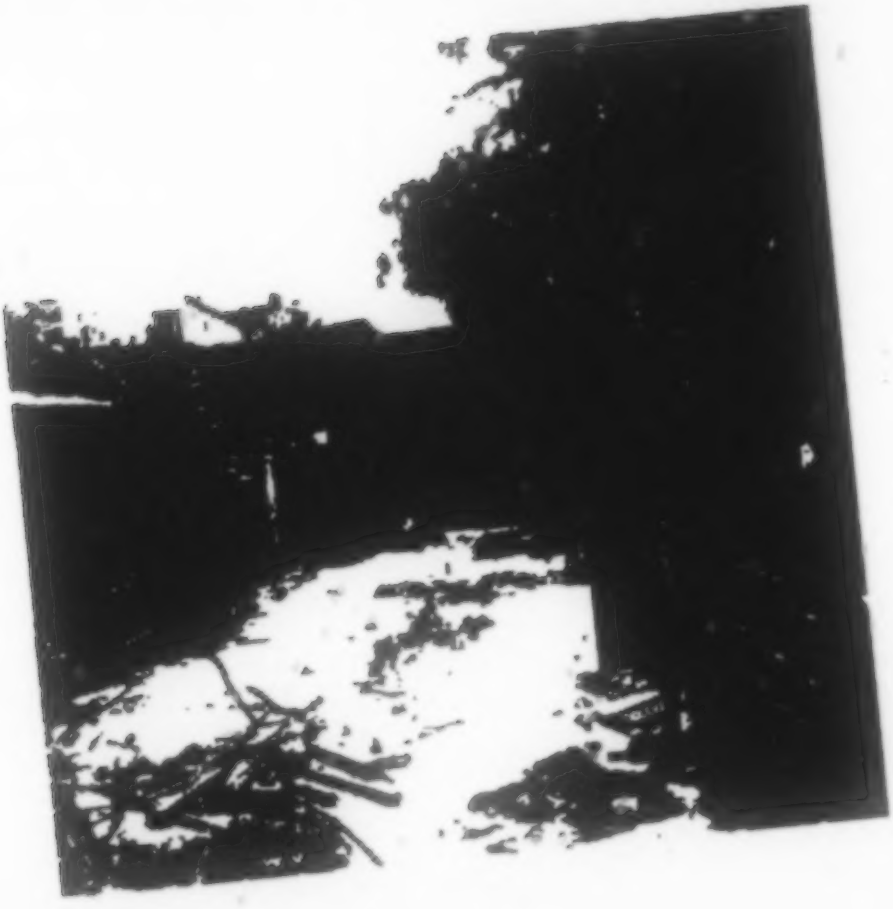
[JOINT EXHIBIT 16 FROM
POST-CONVICTION PROCEEDINGS]









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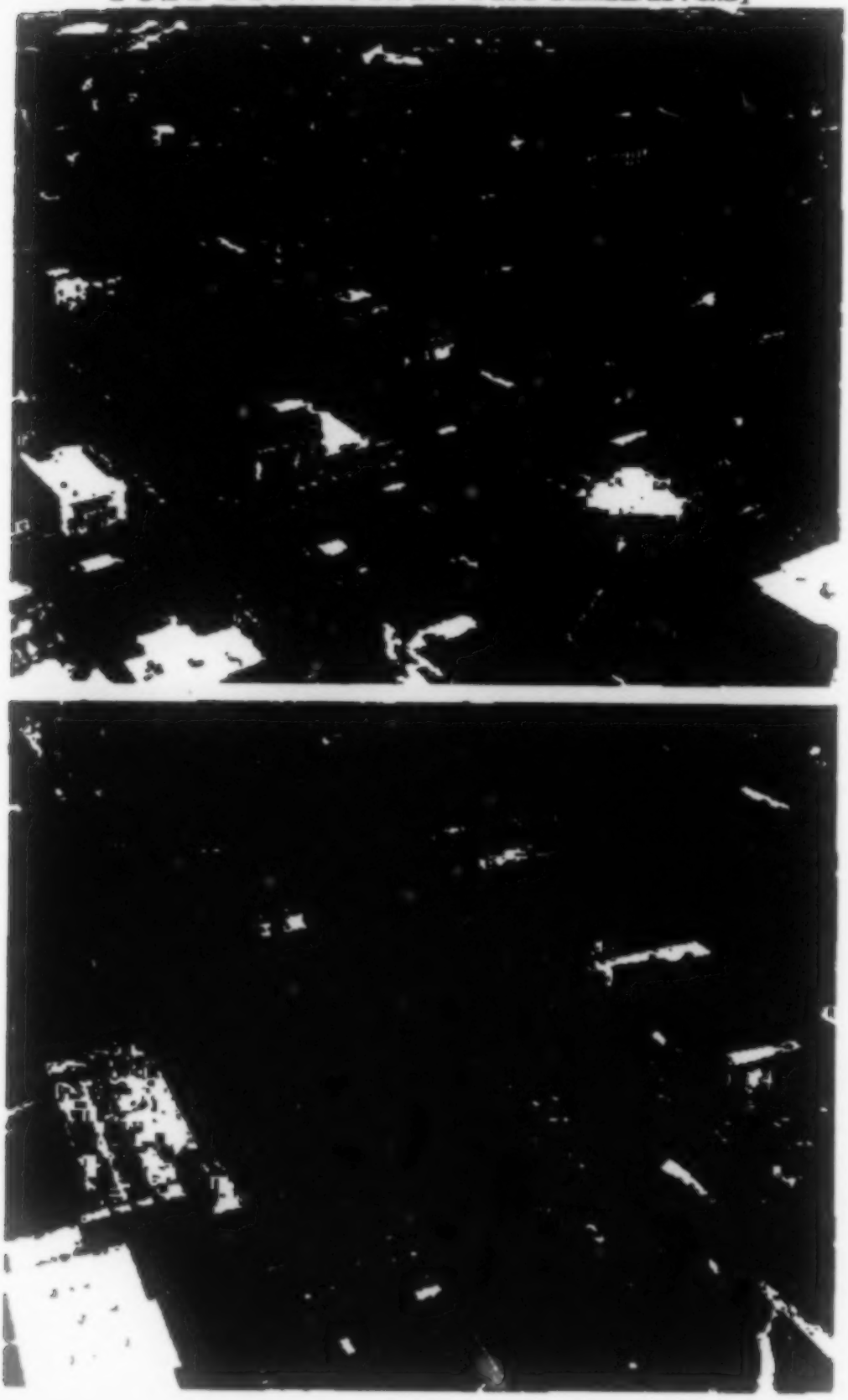
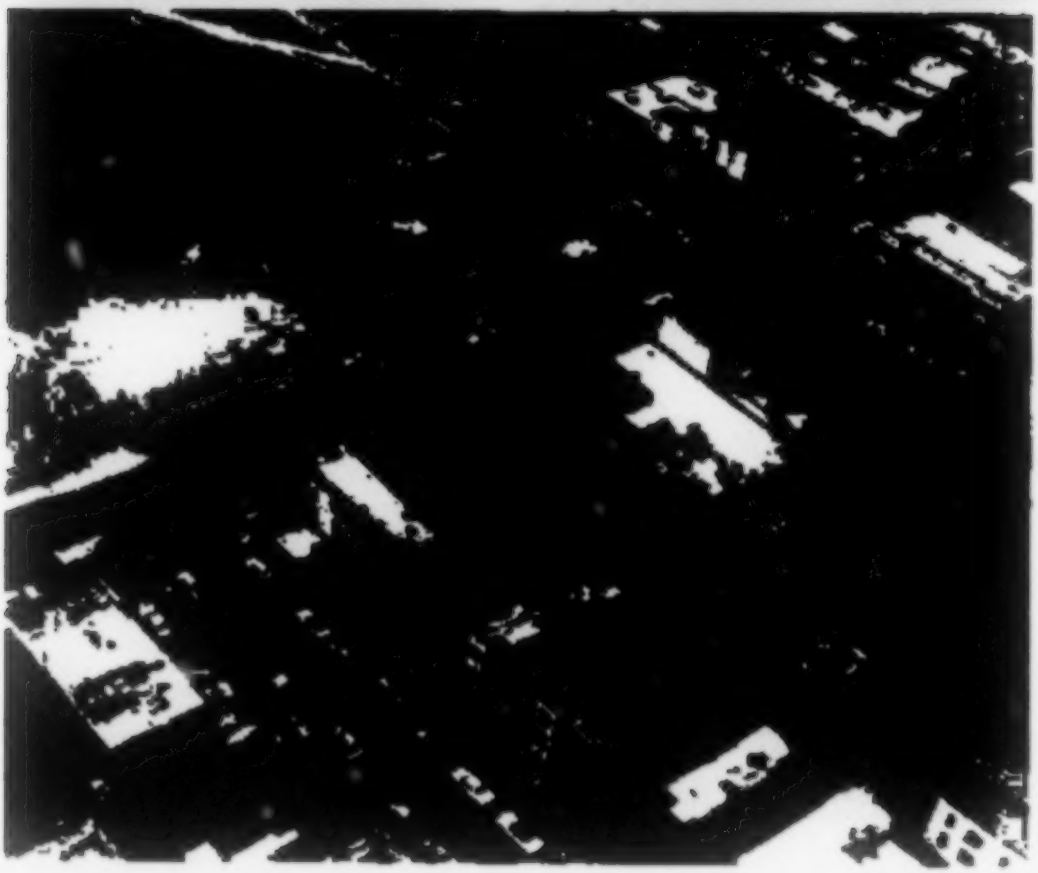
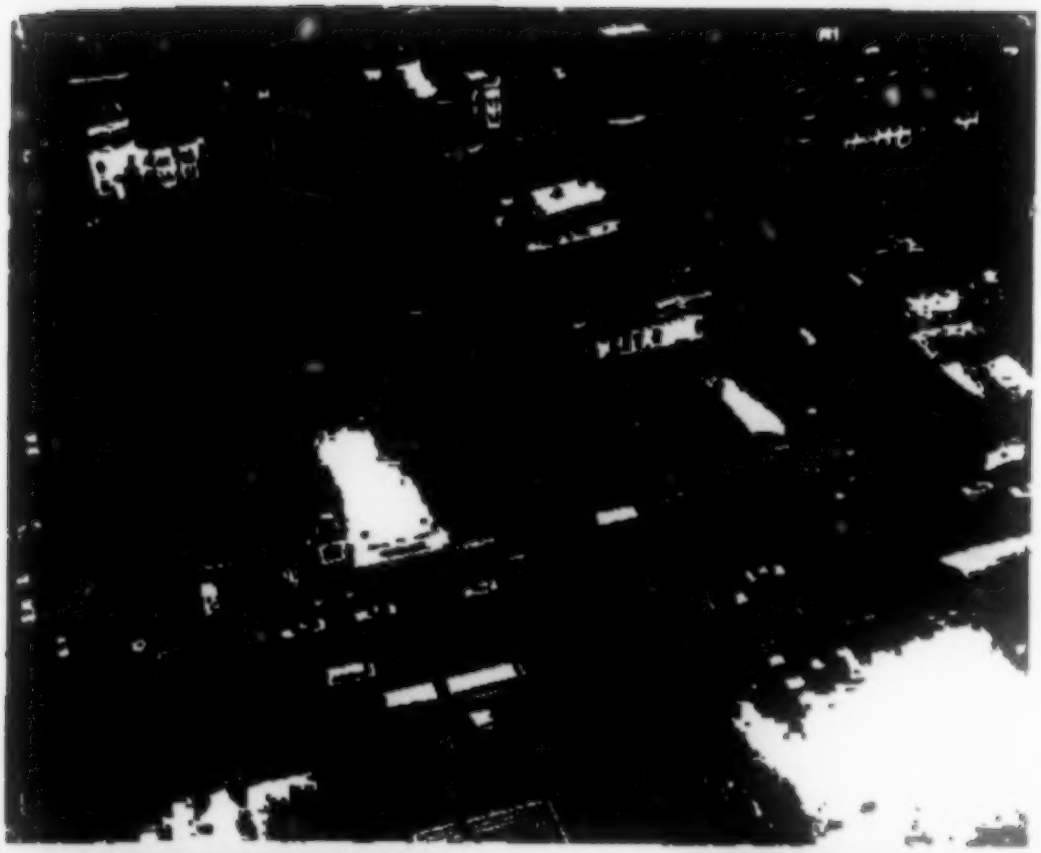
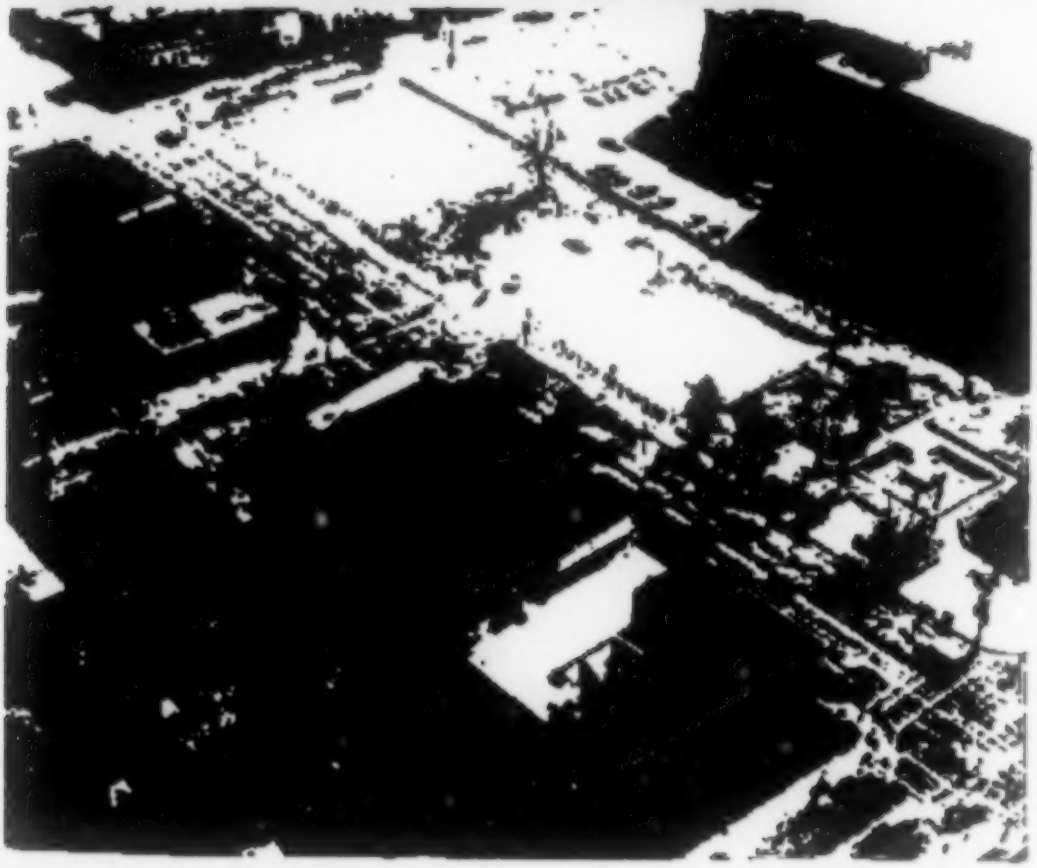
POST-CONVICTION PROCEEDINGS]









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METROPOLITAN POLICE DEPARTMENT
WASHINGTON, D.C.
COMPLAINANT/WITNESS STATEMENT

P.D. 119 12/73

1. COMPLAINT NO.

2. NATURE OF INVESTIGATION: HOMICIDE

3. UNIT FILE NO.: HO# 84-

4. STATEMENT OF: (Last, First, Middle) Ronald Monroe Murphy SS# [redacted]

5. DOB [redacted]

6. SEX: M

7. HOME ADDRESS [redacted]

8. HOME PHONE [redacted]

9. EMPLOYMENT (Occupation and Location): Carson Construction Co., 10605 Concord St., Kensington Md, 20895

10. BUSINESS PHONE [redacted]

11. LOCATION STATEMENT TAKEN: Homicide Br. Office

12. NAME OF OFFICER TAKING STATEMENT (If other than block 18 include signature): Det. P.T. McGinnis

13. DATE/TIME STARTED: 10-3-84, 7:40 PM

14. STATEMENT

Q. Mr. Murphy, please tell me in your own words about a ring that you gave your girlfriend Jackie Watts?
A. OK after I got from work I went to the liquor store, thsts Friendly Liquor Store at 8th and H St. N.E. So this guy came up and he was talking to Vivian at first, then she couldnt buy it so she came to me and asked if I wanted to buy a ring and then the guy came up and asked me if I wanted to buy a ring for $100.00 and I told I didnt have no hundred dollars. Then he said give me $15.00 and I told him not to bother me. I went on and bought my liquor and then the guy said "man give me $5.00" and I did because Five dollars was a good price. After that we just walked back to Jackie's house.

Q. Who was with you the night you bought the ring?
A. Just me and Vivian , Jackie's sister.

Q. About what time was it when you went to the liquor store and ended up buying the ring?
A. Between 8:15 and 8:45 PM, that was my second trip to the store, we had went through that alley earlier.

Q. What alley are you refering to that you went through earlier?
A. The alley between 9th and 8th St. .

Q. You said the we went through the alley earlier, who was with you at that time?
A. Jackie, her uncle Willie Luchie, and Michael Jackson.

Q. Did you see or hear anyone or anything unusual when you four went through the alley?
A. Now I didnt but Jackie said she did, she said that she heard something like someone grown or something like that.

Q. Did she say where the noise came from?
A. Charles looked back at the garage, so did Willie, but they didnt go back, they said that there use to be a car in that garage.

Q. Who is Charles, you didnt mention him before/
A. I forgot, Charles Bowman was with us also it was us four and Jackie.

RM

Sist... by Criminal Fi...

15. I HAVE READ THIS STATEMENT GIVEN BY ME OR HAVE HAD IT READ TO ME. I FULLY UNDERSTAND IT AND CERTIFY THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND RECOLLECTION.

Ronald Murphy
SIGNATURE OF PERSON GIVING STATEMENT

16. DATE/TIME ENDED

17. PAGE 1 OF 1 PAGES

18. OFFICER OBTAINING THE SIGNATURE IN BLOCK 15: (Name and Signature)

19. PERSON WITNESSING THE SIGNATURE IN BLOCK 15: (Name and Signature)

EXHIBIT
JX019

JX19-00001

A1240

[JOINT EXHIBIT 19 FROM POST-CONVICTION PROCEEDINGS]

METROPOLITAN POLICE DEPARTMENT
WASHINGTON, D.C.
COMPLAINANT/WITNESS STATEMENT

PD 119 12/73

1. COMPLAINT NO.	
2. NATURE OF INVESTIGATION: HOMICIDE INVESTIGATION	3. UNIT FILE NO.: HOF 84-
4. STATEMENT OF: (Last, First, Middle) Ronald Murphy	5. DOB / 6. SEX
7. HOME ADDRESS	8. HOME PHONE
9. EMPLOYMENT (Occupation and Location)	10. BUSINESS PHONE
11. LOCATION STATEMENT TAKEN: Hom. Br. Off.	12. NAME OF OFFICER TAKING STATEMENT (If other than block 15 include signature): Det. P.T. McGinnis / 13. DATE/TIME STARTED

14. STATEMENT

Q. Did you see anyone in the alley when you four plus Jackie went through?
A. No.

Q. About what time was that?
A. Lets see I left the job, stopped by the apartment and checked the mail, Id say 5:30 or quarter to six.

Q. What did the man look like that sold you the ring?
A. All I can say is that he was tall. slim build, light complexion, I couldnt tell you what he had on. He did have a girl with him she was about the same complexion.

Q. How old do you think the guy was?
A. I might be older than he was he was about 29 to 32 years old but now real young. He had a rap to him like he had done that type of thing before.

Q. What else can you remember about the girl he had with him?
A. She was slender built, she was black, both of them was black, her hair was was curled up on her head.

Q. Do you remember what the girl had on?
A. No.

Q. Do you know who else was in the liquor store when the man ~~sold~~ sold you the ring?
A. There was quite a few people in the store, but he did all his talking on the street.
Q. Do you mean that the man never went in the Liquor Store?
A. Yes he went inside the liquor store he could have talked to Vivian inside the store but I didnt talk to him until I got out the store.

Q. Which was did the man walk after he sold you the ring?
A. Me and Vivian left him and that girl standing right there at the corner by the bank at 8th and H St.

Q. Did the man say anything about where he got the ring or why he was selling the ring?
A. I cant remember if he said anything like that or not.

RM "The Making of a ... Statement is ... by Criminal Penalties"

Q. did the man have anyother jewlery to offer to sell?
A. No all he showed me was the ring.

15. I HAVE READ THIS STATEMENT GIVEN BY ME OR HAVE HAD IT READ TO ME. I FULLY UNDERSTAND IT AND CERTIFY THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND RECOLLECTION.

Ronald Murphy
SIGNATURE OF PERSON GIVING STATEMENT

16. DATE/TIME ENDED

17. PAGE 2 OF 3 PAGES

18. OFFICER OBTAINING THE SIGNATURE IN BLOCK 15:

19. PERSON WITNESSING THE SIGNATURE IN BLOCK 15: (Name and Department)

JX19-00002

A1241

METROPOLITAN POLICE DEPARTMENT
WASHINGTON, D.C.
COMPLAINANT/WITNESS STATEMENT

P.D. 119 12/73

1. COMPLAINT NO.

2. NATURE OF INVESTIGATION
HOMICIDE INVESTIGATION

3. UNIT FILE NO.

4. STATEMENT OF: (Last, First, Middle)
Ronald Murphy

5. DOB

6. SEX

7. HOME ADDRESS

8. HOME PHONE

9. EMPLOYMENT (Occupation and Location)

10. BUSINESS PHONE

11. LOCATION STATEMENT TAKEN
Hom. Br. Off.

12. NAME OF OFFICER TAKING STATEMENT (If other than block 18 include signature)
Det. P.T. McGinnis

12. DATE/TIME STARTED

14. STATEMENT

Q. Did you her the man say anything to the girl he was with?
A. No, I knew he was saying to her but his back was to me then and I just kept on getting up.
Q. What day was it that you bought the ring at the liquor store?
A. Monday.

Q. Do you have any reason why it stands out in your mind as being Monday?
A. Yes, I had got some money from Jackie Monday.

Q. When did you give the ring to Jackie?
A. That same night.

Q. Do you remember what the weather was like the night you bought the ring?
A. I had this same jacket on that I have on right now, and it was raining.

Q. Would you be able to recognize the man that sold you the ring if you saw him again?
A. Im not sure, but I thing that Vivian could if she saw him.

Q. Do you have any problem reading?
A. No.

Q. Is there anything else you would like to add to your statement?
A. No.

END OF STATEMENT//

RM

"The Making of a False Statement is Punishable by Criminal Penalties"

15. I HAVE READ THIS STATEMENT GIVEN BY ME OR HAVE HAD IT READ TO ME. I FULLY UNDERSTAND IT AND CERTIFY THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND RECOLLECTION.

Ronald Murphy
SIGNATURE OF PERSON GIVING STATEMENT

16. DATE/TIME ENDED
10-3-84, 8:30PM

17. PAGE 3 OF 3 PAGES

18. OFFICER OBTAINING THE SIGNATURE IN BLOCK 15:

19. PERSON WITNESSING THE SIGNATURE IN BLOCK 15:

55

JX19-00003

A1242

METROPOLITAN POLICE DEPARTMENT, WASHINGTON, D.C.

COMPLAINANT/WITNESS STATEMENT

1. NATURE OF INVESTIGATION: INFORMATION PERTAINING TO HOMICIDE INVESTIGATION	3. UNIT FILE NO.
4. STATEMENT OF: (Last, First, Middle) LONEY, FRANK R	5. DOB: 6/21/46 — 6. SEX: M
7. HOME ADDRESS	8. HOME PHONE
9. EMPLOYMENT (Occupation and Location): MPDC LIEUTENANT FIFTH DISTRICT	10. BUSINESS PHONE: 727-4508
11. LOCATION STATEMENT TAKEN: FIFTH DISTRICT	12. NAME OF OFFICER TAKING STATEMENT (If other than block 19 Include signature)
	13. DATE/TIME STARTED: 10/26/84 1400

14. STATEMENT

WHILE INTERVIEWING A PERSON UNDER ARREST FOR DISORDERLY CONDUCT THAT WAS MAKING ALLEGATIONS ABOUT POLICE MISCONDUCT. THE ARRESTEE BEGAN TALKING ABOUT A HOMICIDE. PREVIOUSLY ADVISED OF HER RIGHTS. THE DEFENDANT WASN'T SURE SHE WANT TO DIVULGE ANY INFORMATION. OUR CONVERSATION (from memory) WAS AS follows:

THE CONVERSATION WAS WITH AMMIE LOUISE BROWN AKA AMMIE L DAVIS DOB 12-23-52 of 1292 MORSE STREET, NW (PD ID # 265-839)

HER: WHAT WOULD HAPPEN IF I GIVE YOU SOMETHING ON A HOMICIDE?

ME: I'd LISTEN. WHAT DO YOU HAVE TO TELL ME? IT APPARENTLY HAS BEEN ON YOUR MIND

HER: I DON'T WANT TO GET INVOLVED

ME: APPARENTLY YOU ARE ALL READY

HER: I WANT TESTIFY IN COURT

ME: MAYBE THAT WON'T BE NECESSARY

PAUSE (@ 2 MINUTES)

HER: THE MOTHER FUCKER JUST GOT OUT OF JAIL THE SAME DAY AND KILLED HER FOR JUST A FEW DOLLARS. HE GOT OUT OF JAIL ON MONDAY AND KILLED HER ON MONDAY.

ME: WHEN DID THIS HAPPEN?

HER: ON OCTOBER 1ST

ME: WHERE AT?

HER: IN THE PARK OFF H STREET

15. I HAVE READ THIS STATEMENT GIVEN BY ME OR HAVE HAD IT READ TO ME. I FULLY UNDERSTAND IT AND CERTIFY THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND RECOLLECTION.

Lt Frank R Loney

SIGNATURE OF PERSON GIVING STATEMENT

16. DATE/TIME ENDED: 10/26/84 1500

17. PAGE 1 OF 3 PAGES

18. OFFICER OBTAINING THE SIGNATURE IN BLOCK 15: (Name and Signature)

19. PERSON WITNESSING THE SIGNATURE IN BLOCK 15: (Name and Signature)

EXHIBIT JX020

JX20-00001

WASHINGTON, D.C.
COMPLAINANT/WITNESS STATEMENT

2. NATURE OF INVESTIGATION	3. UNIT FILE NO.
4. STATEMENT OF: (Last, First, Middle) LOVEY, FRANK R	5. DOB / 6. SEX
7. HOME ADDRESS	8. HOME PHONE
9. EMPLOYMENT (Occupation and Location)	10. BUSINESS PHONE
11. LOCATION STATEMENT TAKEN / 12. NAME OF OFFICER TAKING STATEMENT (If other than block 18 include signature)	13. DATE/TIME STARTED

14. STATEMENT

ME: DID HE USE A GUN, KNIFE OR WHAT?

HER: HE BEAT THE FUCK OUT OF HER.

ME: WERE YOU PRESENT WHEN HE KILLED HER?

HER. I WASN'T WITH HIM BUT I SAW HIM GRAB HER BY THE BACK OF THE NECK AND PULL HER INTO THE ALLEY.

ME DID ANYONE ELSE SEE THIS HAPPEN?

HER: YES. I WAS WITH MY GIRLFRIEND SHOOTING STUFF SHE SAW IT TOO. I'M NOT GOING TO TELL YOU HER NAME NOW, BUT, SHE AND I WILL CALL YOU ON MONDAY SO YOU CAN TALK TO HER.

ME: WHAT; THE MANS NAME?

LONG PAUSE

HER. I DON'T WANT TO TALK ABOUT IT

LONG PAUSE

HER: JAMES BLUE

ME WHO?

HER: JAMES BLUE DID IT

ME NOW: NOW YOU SAID HIS NAME AND TOLD ME WHERE. WHEN ANYHOW MAY I TAKE A STATEMENT FROM YOU?

HER. NO. NOT NOW - MAYBE LATER

15. I HAVE READ THIS STATEMENT GIVEN BY ME OR HAVE HAD IT READ TO ME. I FULLY UNDERSTAND IT AND CERTIFY THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND RECOLLECTION.

/s/ Frank R Lovey
SIGNATURE OF PERSON GIVING STATEMENT

16. DATE/TIME ENDED 10/26/84 1500

17. PAGE 2 OF 3 PAGES

18. OFFICER OBTAINING THE SIGNATURE IN BLOCK 15: (Name and Signature)

19. PERSON WITNESSING THE SIGNATURE IN BLOCK 15: (Name and Signature)

JX20-00002

57

A1244

METROPOLITAN POLICE DEPARTMENT
WASHINGTON, D.C.
COMPLAINANT/WITNESS STATEMENT

3. NATURE OF INVESTIGATION	3. UNIT FILE NO.
4. STATEMENT OF: (Last, First, Middle) LONELY, FRANK R	5. DOB / 6. SEX
7. HOME ADDRESS	8. HOME PHONE
9. EMPLOYMENT (Occupation and Location)	10. BUSINESS PHONE
11. LOCATION STATEMENT TAKEN	12. NAME OF OFFICER TAKING STATEMENT (If other than block 14 include signature) / 13. DATE/TIME STARTED

14. STATEMENT

ME: MAY I RECORD OUR CONVERSATION?

HER: AH ANT NOW - MAYBE LATER.

ME: DESCRIBE WHAT JAMES BLUE LOOKS LIKE.

HER: I'm NOT SAYING NOTHING MORE

ME: WHY, ARE YOU AFRAID OF HIM?

HER: THAT'S RIGHT, HOT, I DON'T KNOW IF HE KNOWS IT.

ME: HE MUST BE BIG THEN - RIGHT?

HER: THAT NIGGERS ABOUT 6 FOOT 1 AND 300 POUNDS.

ME: THAT'S BIG ENOUGH HOW OLD?

HER: SAY 34

HER: I DON'T WANT TO TALK ABOUT IT ANYMORE AND I WON'T GO TO COURT. CAN I CALL YOU WHEN I GET MY GIRLFRIEND? SHE CAN TELL YOU IT HAPPENED. YOU CAN MEET US SOMEWHERE.

ME: CAN I BRING ALONG ANOTHER POLICEMAN

HER: NO.

ME: HOW ABOUT SOMEONE FROM ANOTHER POLICE STATION LIKE FROM HEADQUARTERS?

HER: THAT WOULD BE OK; BUT, NOT FROM YOUR DISTRICT.

THIS ENDED OUR CONVERSATION

EARLIER IN OUR CONVERSATION, SHE SAID SHE WAS PRESENT WHEN THE ACTUAL HOMICIDE TOOK PLACE. LATER SHE CHANGED HER STATEMENT TO JUST SEEING BLUE GRABBING VICTIM BY THE NAPE OF HIS NECK AND PULLING HER INTO THE ALLEY.

15. I HAVE READ THIS STATEMENT GIVEN BY ME OR HAVE HAD IT READ TO ME. I FULLY UNDERSTAND IT AND CERTIFY THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND RECOLLECTION.

Jr Frank R Lonely
SIGNATURE OF PERSON GIVING STATEMENT

16. DATE/TIME ENDED 10/30/84 1500

17. PAGE 3 OF 3 PAGES

18. OFFICER OBTAINING THE SIGNATURE IN BLOCK 15: (Name and Signature)

19. PERSON WITNESSING THE SIGNATURE IN BLOCK 15: (Name and Signature)

58

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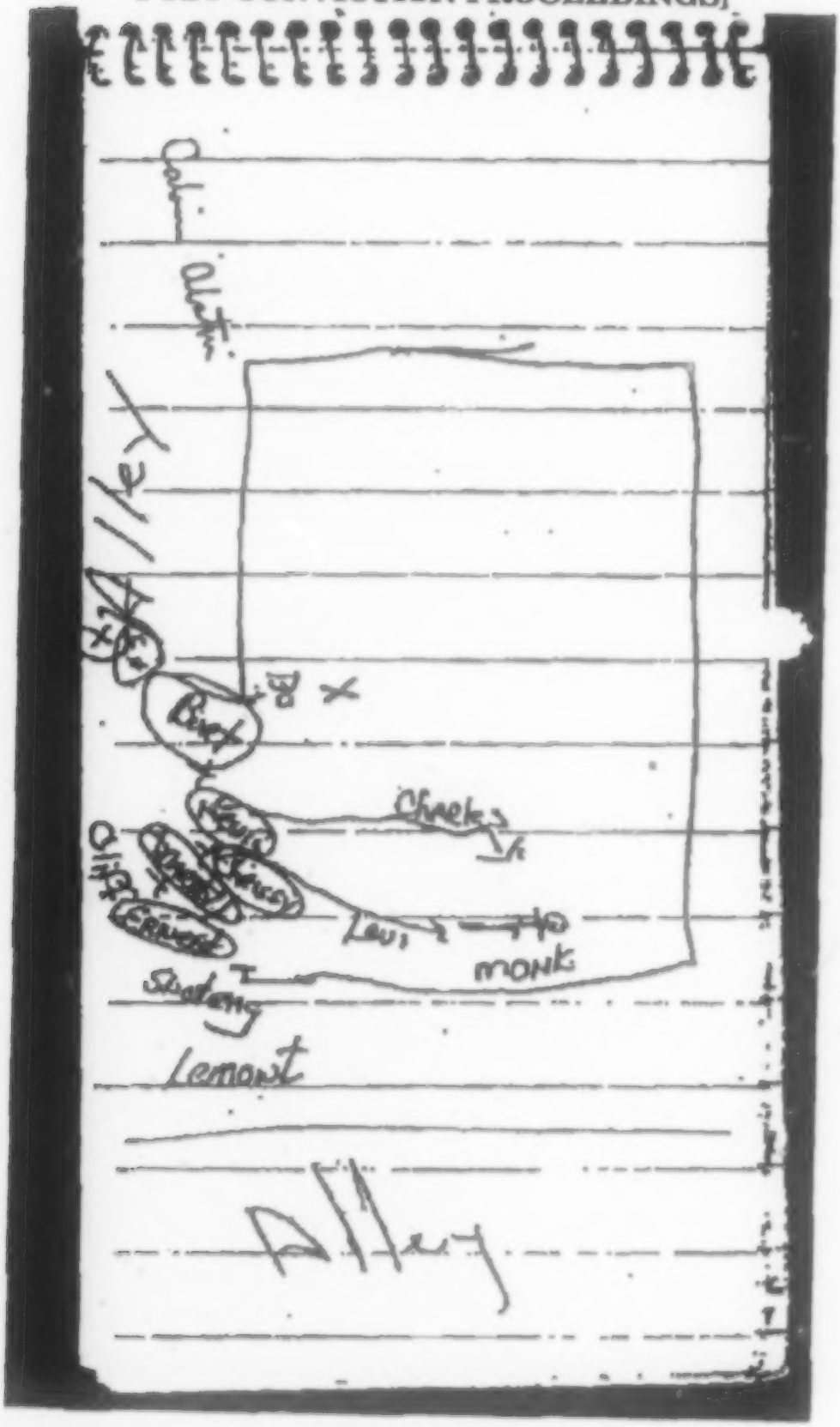
[EXCERPT FROM JOINT EXHIBIT 136 FROM POST-CONVICTION PROCEEDINGS]



SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CRIMINAL DIVISION

Criminal Action Numbers:
F-8617-84

UNITED STATES OF AMERICA

vs.

TIMOTHY CATLETT,

Defendant.

F-6914-84

UNITED STATES OF AMERICA

vs.

ALPHONZO L. HARRIS,

Defendant.

F-8613-84

UNITED STATES OF AMERICA

vs.

RUSSELL L. OVERTON,

Defendant.

F-8614-85

UNITED STATES OF AMERICA

vs.

LEVY ROUSE,

Defendant.

F-5125-85

UNITED STATES OF AMERICA

vs.

FELICIA A. RUFFIN,

Defendant.

F-8616-84

UNITED STATES OF AMERICA

vs.

KEVIN D. SMITH,

Defendant.

F-8513-84

UNITED STATES OF AMERICA

vs.

CHARLES S. TURNER,

Defendant.

Washington, D. C.
Friday, November 1, 1985

Carolyn Sargent-Burns, CP, RPR, CSR
Official Court Reporter Telephone: 879-1036

THE COURT: Yes, sir.

MR. GOREN: I found the notes, Your Honor, and I have turned them over.

THE COURT: Have they had a chance to look at them?

MR. ROBINSON: Yes, Your Honor.

MS. ROBERTS: Your Honor, this is an unrelated matter. There's going to be an objection. We might as well hear it now. I intended to ask this witness about his having attended a lineup on the 18th of October my client stood in. This witnessed identified someone other than my client. Mr. Goren indicated that he would object. It's beyond the scope. If that's beyond the scope –

THE COURT: It is beyond the case, Ms. Roberts.

MR. GOREN: Yes.

MS. ROBERTS: I will call him in my case.

THE COURT: Wait a minute. Just one at time. Ms. Van Susteren.

MS. VAN SUSTEREN: I was going to do the same thing with photographers but wait until –

THE COURT: Would you please.

MS. VAN SUSTEREN: The Government won't release them.

THE: COURT: Now, you're back up.

MS. ROBERTS: I am because Ms. Van Sustern reminded me of a related issue. Mr. Goren has advised me that this witness identified other people since October 18th that resembled the persons in the alley. I don't know if he intends to turn over that information to me or not.

THE COURT: He has completed his examination of him.

MR. GOREN: Yes.

MS. ROBERTS: Well, to the extent that – lot me say this. Mr. Goren did concede that Mr. Freeman's identity was Brady when we asked for his identity. We got it. I'm now suggesting that – to the extent that other persons were identified by Mr. Freeman as being the persons he saw running out of the alley that's also Brady, and I'm asking Mr. Goren, of course, through the Court whether or not he intends to turn over the names and identities of the persons that were identified by this witness as the men he saw leaving the alley and that he clearly doesn't identify my client as being the man. That's something I'll bring in my case.

MR. GOREN: I said this to Ms. Roberts. I don't know if I said it to anyone else but I know I said it to Ms. Roberts because of this lineup issue. I did not consider his identifications to be Brady. In fact, the people he was talking about were people who were in the alley an hour and a half or so after Ms. Fuller was killed. They were coming from Ninth Street. They never went in the garage. They never had any association with the garage. They ran when the police came into the alley, for whatever reason no one will ever know. It didn't seem to me that that was Brady in any way. In fact, nor was the identification procedures that may or may

not have been used with Mr. Freeman to find out who they were or the names of any people that he might have identified photographs.

THE COURT: Do we have to take that up at this moment?

MS. ROBERTS: Not if we're not going to –

THE COURT: Because this jury –

MS. ROBERTS: That's fine. Since the Court has ruled it's beyond the scope, I'll call him in my case.

THE COURT: All right.

MS. ROBERTS: I don't mind tabling the issue until then.

THE COURT; All right, thank you. Anybody else?

MR. ELSTEN: We will join in Ms. Roberts motion.

THE COURT: Where is your motion? I don't know if she has a motion.

MR. ELSTEN: Well, I believe Ms. Roberts has asked the Court to find that these materials were Brady materials. We join.

THE COURT: I don't know that she said that as yet. In any event we'll take that up later.

THE DEPUTY MARSHAL: You want the witness in first, Your Honor?

THE COURT: Yes, would you please, sir.

MR. GOREN: I might just add, the next witness after this is the first officer on the scene, the one who does not have her notebooks. She tells me that she only wrote down the names and addresses of the two people she talked to, one of them is Mr. Freeman. I am not aware of any Jencks material that would have come

out of what she wrote down even if she had a notebook. But the Court indicated that he might want to make some inquiries of her at some point.

THE COURT: If they don't accept your word they can ask them themselves. Unfortunately, it will take a lot longer, but they have that right.

THE DEPUTY MARSHAL: Step around, sir. You want the jury?

[Thereupon, at approximately 2:40 p.m., the the witness returned to the stand and the jury entered the courtroom.]

THE COURT: All right, let the record reflect that the ladies and gentlemen of the jury and alternates are back. All of the defendants, defense counsel and Government counsel are present.

Ladies and gentlemen, occasionally because .. the number of defense counsel who can't assemble around this bench up here, I will have to ask that you go out as you did just now. The fact that I do that – the fact defense counsel and Government counsel are up here has no bearing whatsoever as far as you all are concerned. So, don't let that concern you for one minute. It. has no bearing at all. These are just legal matters that I have to rule on and it has nothing to do with your consideration of the case.

* * *

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UNITED STATES OF AMERICA

vs.

CHARLES S. TURNER,

Defendant

Washington, D.C.
Monday, November 4, 1985

Carolyn Sargent-Burns, CP, RPR
Official Court Reporter Telephone: 879-1036

[TESTIMONY OF MELVIN MONTGOMERY]

* * *

[174] right, and it was raining, so we went on back down to the park.

Q Slow down a little bit.

And when you went back to the park, where did you go in the park?

A To underneath the porch, the little shed.

Q Now, that little shed, the little porch you're referring to, is on H Street or on 8th Street, number eight?

A The number.

Q And what did you do when you got back to the shed?

A We started smoking the reefer.

Q When you got back to the park, do you know what time it was at that time?

A No.

Q Did you, at that time, recognize anybody who was in the park?

A The same people.

Q And when you say the same people, who are you referring to again?

A Bo-Bo, Tim-Tim, Fella, Levy, Silky and Burt.

Q Were they alone or were there other people around at that time?

A There was other people around.

Q Do you have any idea how many people were in the park at that time?

[175] A No.

Q Would you say there were a lot or a few?

A There was a lot of people.

Q Now, where in the park when you got back there were Levy, Bo-Bo, Tim-Tim, Fella, Burt?

A Like up in between the walkway.

Q When you say in between the walkway, what is in between it?

A It's two like – one pile of grass, Platt of grass on another platt of grass.

MR. GOREN: At some point I'll show him a photograph, Your Honor, and that will make it clear.

THE COURT: What was the word he used to describe it? They were where?

THE WITNESS: In between the two platts.

THE COURT: Between the two platts?

THE WITNESS: Yes. Like they are boxed in with grass on top of it.

BY MR. GOREN:

Q Now, do you remember any of the other people who were out there that day?

A No.

Q All right.

What did you and Tommy do while you were – you said you smoked some reefer?

[176] A Yes.

Q How much reefer would you say you smoked at that time?

A Two joints.

Q Had you smoked anything before that in the morning?

A No.

Q And when you say two joints, that's two joints between you or two joints each?

A Two joints between us.

Q While you were sitting there, did you notice what else was going on in the park?

A Yes.

Q What?

A They was making noise.

Q Who is "they"?

A All of them.

Q When you say "all of them," who are you talking about?

A Bo-Bo, Tim-Tim and Levy and Fella.

Q Were they the only ones making noise?

A No, there was other people out there. I just don't remember who they was.

Q What – what kind of noise and what were they doing?

[177] A They was singing Chuck Brown's song, "We Need Some Money."

Q Now, if you could say that slowly.

THE COURT: Singing what?

THE WITNESS: Chuck's song, saying, "We need some money, gotta have some money."

BY MR. GOREN:

Q When you say "Chuck," who are you referring to?

A The singer.

Q Chuck Brown?

A Yes.

Q All right.

And what are the words of that song that you remember them singing?

A "We need some money, gotta have some money."

Q Now, you repeated it twice. Were they singing it more than once?

A Yes.

Q Do you remember who among them was singing that song?

A Tim-Tim.

Q And was he the only one talking – singing that song?

A He was the only one I remember hearing say it.

Q Did you hear other people talking about singing the [178] song?

A Yes.

Q Do you know who those people were?

A No.

Q Do you remember any of the other things that you heard being said at that point?

A No.

Q Just, "We need some money," and the money song?

A Yes.

Q Now, let's talk about Mr. Catlett, the person you referred to as Tim-Tim. What was he doing while he was singing that song?

A Jumping on and off the wall.

Q Which wall is that?

A The little platts where the grass was at.

Q And what about the other people who were with him?

A Some were jumping on and off, too.

Q Do you remember who in particular?

A No.

Q Do you remember whether or not Mr. Overton, Mr. Rouse, or Mr. Turner – Fella, Levy or Bo-Bo were doing any of that?

A Levy and Fella was. Bo-Bo was just standing still.

Q Where was he standing?

[179] A On the ground.

Q Whereabouts in the park?

A Between the two platts.

Q Now, how long did you sit there while all of this was going on?

A We was standing up.

Q Whereabouts? Under the shed?

A Yes.

Q How long were you standing there?

A About fifteen, twenty minutes.

Q Okay.

And you mentioned somebody else as being out there. Silky?

A Yes.

Q What do you recall Silky doing during all this time?

A He was standing up in front of me and Tommy.

Q When you say in front of you, where was he? I don't know where you were standing.

A It is two little stools right underneath the porch in the back.

THE COURT: What?

THE WITNESS: Chairs you sit around and a pole hold them up in the middle. He was in the front stool.

[180] BY MR. GOREN:

Q Was he further into the park or was he out near the sidewalk?

A Out near the sidewalk.

Q All right.

And was he there that whole time?

A Yes.

Q What happened at that point?

A Then he left. He said he had to move his car or something.

Q Who is he?

A Silky.

Q Do you know Silky's real name?

A Roy.

Q You call him Roy?

A Yes.

Q He left and he said he had to move his car?

A Yes.

Q Did you see where his car was parked?

A On the H Street side.

Q On the H Street side?

A Yes, by the bus stop.

Q Okay.

That's the side near the park?

A Yes.

[181] Q And did you see where he moved his car to?

A Over across the street on the other side of the record store.

Q What record store?

A Nat's.

Q So that's the same side of H Street as the People's?

A Yes.

Q Is that the same block that People's is in?

A Yes.

THE COURT: What hundred block would that be?

MR. GOREN: 800 block, Your Honor.

THE COURT: Would it be the north or the south?

MR. GOREN: It would be the north side of the street.

BY MR. GOREN:

Q Now, while he moved his car, what were you doing?

A Still standing there. Me and Tommy was talking.

Q Do you remember what you were talking about?

A He was showing me these jeans he had.

MS. VanSUSTEREN: I didn't hear his response.

THE COURT: I didn't either.

BY MR. GOREN:

Q Say that again.

A He was showing me some jeans he had in a bag.

THE COURT: That was Tommy Mallard?

[182] THE WITNESS: Yes.

BY MR. GOREN:

Q Did Silky, at some point, come back to the park?

A Yes.

Q All right.

And do you know how long he was goine?

A No.

Q And was – did you watch him the whole time?

A No.

Q Do you knew what time it was when he went to move his car?

A No.

Q Did – while you were sitting there, what were Mr. Overton, Mr. Rouse, Mr. Catlett, Mr. Turner – the people you refer to as –

MR. DEBERARDINIS: Your Honor, may we be specific as to which Mr. Turner we are speaking about here?

MR. COREN: He was specific. Mr. Charles Turner.

THE COURT: You referred to Mr. Charles Turner?

MR. GOREN: Mr. Charles Turner.

BY MR. GOREN:

Q Mr. Charles Turner, the person you referred to as Fella, Levy, Bo-Bo and Tim-Tim, what were they doing during the time that you were sitting there – standing there with Mr. Mallard and Silky was crone moving his car?

[183] A They was standing there.

Q Were they still – did you still hear someone singing and talking about making money?

A Yes.

Q Do you remember who that was?

A Tim-Tim.

Q All right.

Now, at some point, did you hear anything else?

A Somebody said they were going to get that one or something.

THE COURT: What?

THE WITNESS: Somebody said they were going to get that one.

BY MR. GOREN:

Q All right.

And did you hear who said that?

A No.

Q What did you do when you heard someone say, "We are going to get that one"?

MR. SULLIVAN: Your Honor, I don't think that's what he said. I think he said "they."

THE COURT: Did you hear one or more people say –

THE WITNESS: I said somebody.

[184] BY MR. GOREN:

Q All right.

Was it one person?

A Yes.

Q What did you do when you heard that?

A I turned and looked.

Q And what did you see when you turned and looked?

A I seen a lady standing at the corner.

Q Now, did you see the people that you were talking about before, Mr. Overton, Mr. Rouse, Mr. Catlett, Charles Turner?

A Yes.

Q Where were they?

A In between the two aisles.

Q In between the two what?

A Platts where the grass is at.

Q And did you see what they were doing at the time that you heard that said?

A Standing still.

Q Did you see anybody doing anything at that point?

A No.

What was it that drew your attention to the lady? Why did you look at the lady?

A Bo-Bo was pointing.

Q What was he pointing at?

[185] A He was just pointing in that direction.

Q And when you followed that direction, that's when you saw the lady?

A Yes.

Q Where was that lady standing?

A On the corner.

Q On which corner?

A On the H Street corner.

Q Do you know whether – could you tell whether or not – what Mr. Overton was pointing to, what Bo-Bo was pointing to?

A No.

Q And you say you turned around. Where were you facing before that, before you turned around?

A The Coco Club (phonetic).

Q Where's the Coco Club?

A In front of the bus stop over across the street.

Q Across what street?

A 8th Street.

Q The number eight?

A Yeah.

Q Now, when you looked over, after hearing somebody say, "Let's get that one," and you saw Mr. Overton pointing, who else was around him at that time?

A Levy, Tim-Tim, Fella.

[186] Q Were there any other people around him at that time?

A Yes.

Q Do you remember who they were?

A No.

Q Were there a lot or a few people around?

A There was a lot of people.

Q Now, at that point, what happened?

A They started to leave.

Q Who is "they"?

A Bo-Bo, Tim-Tim, Levy and Fella.

Q What about the other people who were with them?

A They left, too.

Q Did you see – when you said they left, where did people go?

A Well, like the cars was coming, so –I just glanced at them and seen them going into the street. Then turned back, right, and was talking to Tommy.

Q When you say you glanced and saw them go into the street, do you remember specifically who you saw going into the street?

A Yes.

Q Who?

A Levy and Fella was like together, and Tim-Tim and Bo-Bo was like going. It looked like to me they was going [187] toward 9th Street.

Q Now, what street was it they were crossing?

A H.

Q The letter H?

A Yes.

Q Did they cross – do you remember where they crossed the street?

A Well, Levy crossed closer to the 8th Street corner.

Q The number eight?

A Yeah.

Q And what about Bo-Bo and Tim-Tim?

A They was just like in the middle of the street.

Q Okay.

THE COURT: When you say middle, would that be closer to 7th Street or closer to 9th Street?

THE WITNESS: Closer to 9th.

THE COURT: When you say Levy was closer to 8th Street, Bo-Bo and who?

THE WITNESS: Fella.

MR. GOREN: Well, let me just go over it again.

THE WITNESS: I said Levy and Fella was going toward H Street, and Bo-Bo and Tim-Tim was going – to me it looked like they was going toward 9th Street.

BY MR. GOREN:

Q Did you see where they went?

[188] A No.

Q What did you do at that point that you didn't see where they went?

A I turned back around and was talking to Tommy.

You said there were other people around them at the time that you heard somebody say, "Let's get that one." Did you see what happened to those other people?

A They left, too.

Q Could you tell where they were going?

A No. They was going in the street, too.

Q So you turned back to talk to Tommy, you say?

A Yes.

Q And what happened then?

A Then me and Tommy was just talking, right?

Q Did you look back at all after that, after you saw them cross the street?

A No. When I looked back, they was gone. I didn't see nobody.

Q You say you didn't see anybody?

A Right.

Q Was everybody gone?

A Yes.

Q When you say everybody, there was nobody else in the park at that time?

A Yes, there still was people in the park around the [189] bus stop and things. But wasn't nobody in the back on the side between the two things no more.

Q And that's where you saw –

MS. VanSUSTEREN: I didn't hear that response at all.

THE COURT: Between the two things. Tell them what you mean by the two things.

THE WITNESS: The two platforms where the grass at.

BY MR. GOREN:

Q All right.

What did you and Tommy do at that point?

A We was still standing there talking.

Q And how long did you stand there and talk?

A About fifteen minutes or so.

Q Then what?

A Then I walked him to the corner.

Q Then what happened?

A Then went down towards 7th Street.

Q All right.

A Then I walked back over there and me and Silky were standing there.

Q When you say you walked back over there, where did you walk back over to?

A Back to the shed under the little porch.

Q You said Silky was there?

[190] A Yes.

Q What happened when you got back there?

A Me and him stood there for a little while, then he said, "Let's go sit in the car and warm up."

Q Did you –

THE COURT: He has got to hold his voice up.

BY MR. GOREN:

Q What did you say?

A He said, "Let's go sit in the car and warm up."

THE COURT: Who said that?

THE WITNESS: Silky.

BY MR. GOREN:

Q So what did you do?

A We went to sit in the car.

Q Where was his car when you went to sit in it?

A In front of the record store.

Q All right.

How long did you sit in Silky's car?

A I don't know. It could have been close to half an hour or longer.

Do you remember the things that happened while you were sitting in Silky's car?

A Yes.

Q What happened?

A The radio said something about the Prince tickets [191] was sold out.

THE COURT: I cannot –

THE WITNESS: The radio said something about the Prince tickets was sold out, but there was a card in front of the car saying that the record store had tickets, right? So we went inside the store and asked Nat did he have any more tickets. He said yes.

BY MR. GOREN:

Q You don't have to tell us what everybody said. He went into Nat's Record Store to get Prince tickets?

A Yes.

THE COURT: Silky did?

THE WITNESS: Yes.

BY MR. GOREN:

Q Where did you go?

A I was still sitting in the car.

Q Did Silky, at some point, come back from there?

A Yes.

Q What happened then?

A We sat in the car, and then two ladies was trying to get a jump right?

Q Now, where were these two ladies?

A Talking to the guard in the record store.

Q When you say get a jump, what do you mean?

[192] A For their car.

Q The battery had died?

A Yeah.

Q What did you do?

A The guard had some cables, so he gave the cables to Silky because he said he would give her a jump.

Q Slow down.

A The guard had some cables, so he gave them to Silky Sc. he could give her a lump. So we pulled across the street on the other side to give a jump.

Q Where was the lady's car? The other side, meaning on the park side?

A Yes.

Q And you say you gave them a jump.

A Yes.

Q You helped start the car?

A Yes

Q What did you do after that?

A We pulled back on the other side of the street.

Q And then what?

A Then we sat in the car for a little while. Then we got out of the car and went back to the park.

Q All right.

And when you got back to the park, do you remember recognizing or seeing anybody you knew in the park at that [193] point?

A No.

Q What happened then?

A Then two little guys was fighting.

Q When you say two little guys, are you talking about younger kids?

A Yes.

Q All right.

Then what?

A And then Cliff came. He was with the two little guys that was fighting. He was trying to break them up.

Q When you say Cliff came to try to break them up, who was Cliff?

A That little guy in the corner with the blue shirt – light blue shirt on and necktie.

MR. GOREN: For the record, Your Honor, Mr. Montgomery has identified Defendant Clifton Yarborough.

THE COURT: All right.

BY MR. GOREN:

Q Did you talk to Clifton at that time?

A No. He was trying to break up – telling one of the little guys to go ahead; right?

Q We don't want to hear the whole thing. Did he, at some paint – did he stay in the park?

A No.

[194] Q What did he do?

A Him and one of the little guys left.

Q Did you see what direction they went in?

A They went down H Street towards 9th Street.

Q Had you seen Clifton out there earlier?

A No.

MR. ROBINSON: Objection, Your Honor. Leading.

THE COURT: It isn't leading. The answer to that is yes or no. It doesn't suggest that he had or hadn't. Have a seat, please.

MR. ROBINSON: I have another objection. It has been asked and answered earlier. A number of times he asked who was there.

THE COURT: Have a seat.

Go ahead.

BY MR. GOREN;

Now, you say you got back to the park. What happened when you got back to the park after this incident where you saw Mr. Yarborough?

A Silky told me that he had to leave –

MR. ROBINSON: Objection, Your Honor.

THE COURT: Overruled.

MR. GOREN: Thank you.

BY MR. GOREN:

Q Go ahead.

A Silky told me that he had to leave and would I hold a few bags of reefer for him while he was gone.

THE COURT: Hold two bags of what?

THE WITNESS: A few bags of reefer.

THE COURT: I didn't hear him.

MR. GOREN: Sit up closer and say it again.

THE COURT: Straighten yourself out in the chair so the people out here this way can hear you just as well. Your back is entirely to us.

Go ahead.

THE COURT: He said he had to leave and would I hold two bags of reefer for him.

BY MR. GOREN:

Q All right.

And did you do that?

A Yes.

Q Where did you stay?

A In the same spot I was, in front of the porch, the little shed.

Q And that's on 8th Street, the number eight?

A Yes.

Q How long did you stay there?

A I guess about fifteen minutes or so.

Q Okay.

And what did you do after that?

[196] I left and went down the street to the arcade, then I went in Snyder's.

Q Okay.

How long did you stay there?

A I stayed in there about half an hour.

Q Then what happened?

A I walked back – when I came out Snyder's, I walked back to the corner and Sharon called me. Then she told me they found a little girl in an alley dead.

Q And where was it that you saw Sharon when she told you that?

A On – on the side by the Coco Club.

Q Okay.

Q When you say on the side by the Coco Club, you were on H Street, the letter H?

A Yes.

Q On the corner of 8th and H?

A Yes.

Q But not on the park Side, on the Coco Club side?

A Yes.

Q That would be the southwest corner?

THE COURT: Is that where he was or wasn't?

MR. GOREN: That's where he was when he met Sharon Sinclair.

THE WITNESS: Yes.

[197] BY MR. GOREN:

Q Now, exactly what was it that Sharon said to you at that point?

MR. ROBINSON: Objection, Your Honor. Hearsay.

THE COURT: It is not offered for the truth.

Next question.

BY MR. GOREN:

What did she say to you?

A She said that they found a little girl dead in the alley.

Q Okay.

And what did you and Sharon do at that point?

A Walked back across the street.

Q Which street?

A H Street.

Okay.

A On the side by the park.

Q Okay.

And went where?

A Went straight down to 9th Street.

Q Did you look at the park at that point?

A Yes.

Q And did you see anybody in the park at that point that you recognized?

A Tim-Tim and Bo-Bo.

[198] Q All right.

And could you tell what they were doing at that point?

A Just sitting down.

Q Where were they sitting down?

A Under the little shed.

Q The same one that you had been sitting under?

A Yes.

Q Where did you and Sharon go?

A We went down to 9th Street and up there still by the alley because they had put yellow tape up.

Q Slowly.

You went down 9th Street and then went where?

A Across H Street up in 9th Street.

Q You walked down from in front of the park to 9th Street?

A Yes.

Q You made a left on 9th Street?

A Yes.

Q And you walked up how far?

A To the first house on 9th Street.

Q Where the alley was?

A Yes.

Q What did you see when you got to the alley?

A Yellow tape up.

[199] Q Did you see anything else?

THE COURT: I didn't hear what he said.

MR. GOREN: Yellow tape, he said.

BY MR, GOREN:

Q Where was the yellow tape?

A In the alley, closing the alley off.

Q Did you see any police at that point?

A Yes.

Q Where were they?

A Up in the alley.

Q And were there other people around where you were standing?

A Yes.

Q Do you remember who?

A Sharon's mother, Sharon's sister, and Kenny Wigfall and Warren.

Q Let's do that slowly one at a time.

A Sharon's brother, Sharon's sister, and Mr. Wigfall – I mean Mr. Pendergrast was there.

Q Mr. Pendergrast?

A Yes.

Q All right.

A And. Sharon's stepfather was there.

Q All right.

And you mentioned Kenny Wigfall?

[200] A Yes.

Q Were there other people there that you didn't know?

A Yes.

Q How long did you stay at the mouth of the alley?

A About fifteen minutes.

Q And what did you do after that?

A Silky had came and got his – him and Elwood came around and got the reefer and gave me a bag.

THE COURT: I can't understand.

MR. GOREN: Slowly. Sit close to the microphone.

BY MR. GOREN:

Q Tell me again. Silky did what?

A Silky came back around there and he gave me a ball of reefer and I gave him the other bag.

THE COURT: Where did Silky come to?

THE WITNESS: 9th Street by the alley.

THE COURT: Was he by himself?

THE WITNESS: Him and Elwood was together.

THE COURT: And Silky gave you what?

THE WITNESS: I gave him the bags of reefer back, and then he gave me a bag.

BY MR. GOREN:

Q What had Silky been giving you the reefer for to begin with?

[201] A Huh?

Q What did Silky give you the reefer for to begin with?

A He just told me to watch it; right?

Q Told you to what?

A He just told me if somebody come, right, if they want to search not to – just tell them it was on the ground and take the money.

Q He wanted you, if somebody came, to sell the reefer for him and give him the money?

A Yes.

Q Did you do that at all while you were out there?

A No.

Q Did he – after you gave the reefer back to Silky and kept the bag –

A Yes.

THE COURT: He didn't keep it. He said he was given the bag, according to my understanding of the testimony.

Ladies and gentlemen of the jury, it is your understanding of the testimony that controls at all times during the case, not mine.

MR. GOREN: I clearly misstated that. He did say Silky gave him a bag.

BY MR. GOREN:

Q Why did he give you a bag at that point?

[202] A Because I was holding the reefer for him.

Q Did – what did you do after – after that? Did you leave the mouth of the alley?

A Yes. Me and Sharon left and went to the store.

Q Which store is that?

A She had to play the numbers in People's Drugstore.

We stopped there and she went to Chung King's.

Q Say it again.

A We left and went to Chung King's.

Q Did you say she stopped at People's?

A She had to, but we stopped on the way back.

Q All right.

Now, when you walked down L Street toward Chung King's did you walk on the People's side of H Street?

A Yes.

Q And where did you cross to get to Chung King's?

A We crossed on the other side by the other bank.

Q So you walked down H Street, across 8th Street, and then made a left and crossed there?

A Yes.

Q Did you see anybody down at that corner that you recognized?

A Levy and little Ronny.

When you say little Ronny, who is little Ronny?

A That's his name. He be with Levy. I guess he's [203] Levy's little brother.

Q Do you know his last name?

A No.

Q Can you describe him to us, what he looked like?

A He is short, brown-skinned and slim.

Q When you say brown-skinned, is he darker than you?

A He's about the same.

What about his hair? What does his hair look like?

A Short.

Q Where did you see Mr. Rouse, Levy, and little Ronny?

A On the side by the bank on this side, on the right side.

Q When you say the right side, that doesn't mean anything. The bank across 8th Street, or the bank that's on the same block as the People's?

A The bank across.

THE COURT: Where were Levy and Ronny when you saw them as they were going over to Chung King's?

THE WITNESS: They were on the side by the bank.

THE COURT: Is that north or south side?

MR. GOREN: It's the northwest corner.

BY MR. GOREN:

Now, did you go to Chung King's?

A Yes.

[204] Q And how long did you stay there?

A I guess about ten minutes or so getting food.

Q Okay.

What did you do after that?

A We walked back down the street.

Q Which street did you walk back down?

A H Street.

Q Which side of H Street did you stay on? The side where the park is or the side where the People's is?

A The side where the park is.

Q Where did you walk to, how far down?

A To the corner and crossed over.

Q Which corner?

A 8th and H corner.

Q Did you have an opportunity to look in the park at that point?

A Yes.

A And did you see anybody there that you recognized?

A Tim-Tim, Bo-Bo, and Silky.

Q And where were they?

A Standing underneath the porch, the little shed.

Q Same shed you are talking about you standing under?

A Yes.

Q What did you do from there?

A We went over to People's, into People's.

[205] THE COURT: Was that you and Sharon?

THE WITNESS: Yes.

MR. GOREN: Court's indulgence one moment.

(Pause.)

BY MR. GOREN:

Q Mr. Montgomery, I want you to come down, if you could.

A (Witness complies.)

Q Stand over there so the judge, ladies and gentlemen of the jury can hear. You have to keep your voice up so the court reporter can hear it and the judge and everyone else can.

Do you recognize what you see in this picture?

A Yes.

Q Louder.

A Yes.

Q What do you see?

A The park.

Q When you say the park, what park are you talking about?

A The 8th and H park.

MR. GOREN: Can the Court hear that?

THE COURT: No, I cannot.

THE WITNESS: The 8th and H park.

THE COURT: There is no way, Mr. Goren, and you're [206] standing right there, that any of us are going to hear back here when he is looking at that chart and facing it.

MR. GOREN: I'll do my best.

THE COURT: Please do.

BY MR. GOREN:

Q Tell the Court and the ladies and gentlemen of the jury what park that is.

A 8th and H park.

Q Do you see the shed or the porch that you talked about sitting or standing under?

A Yes.

Q Okay,

Can you point to that?

A Yes (indicating).

Q Now, can you just take this red pen and just circle that porch?

THE COURT: What exhibit is that, please?

MR GOREN: This is Government's Exhibit 7.

THE WITNESS: (Witness complies.)

BY MR. GOREN:

Now, you also testified that when you first got to the park some time after you took your daughter there – home, that Levy, Bo-Bo, Tim-Tim and Fella were in the park.

A Yes.

Q Okay.

[207] Can you just point to the area where they were at that time?

A Right between here –

Q You have to say it loud.

A In between here.

Q Louder, louder, louder.

THE COURT: Let me come down and look.

Can you, ladies and gentlemen of the jury – that's what is most critical as well as counsel – see where he is pointing on that thing? Let me come down and take a look at that.

Where is he pointing, please?

MR. GOREN: Point to that again.

THE WITNESS: It's here (indicating).

THE COURT: Hold your voice up.

THE WITNESS: Like this piece of board here, this one right here, right in here (indicating).

BY MR. GOREN:

Q When you say platt, you are talking about these areas of grass that are planted here?

A Yes.

Q Now, at some point, you said you heard some people singing a song about money and talking about money, and you said a couple of people were jumping on and off walls.

Where was that that they were?

[208] A Right here (indicating).

Q Where?

A In between the platts.

Q That same area?

A Yes.

Q Did you ever see any of the people you talked about or any of the people in that group anywhere else in the park that afternoon?

A One time they went to the back of the park back here. There's a table back there. You can't see to the table.

MR. GOREN: He has pointed to an area on the – I guess eastern side of the, picture of the Park down near the bottom of the pavement area.

BY MR. GOREN:

Okay.

And the last thing is, at some point you said that you saw Levy and little Ronny near a bank. Can you point to where that bank is?

A Right here on the corner (indicating).

MR. GOREN: He's pointing to the northwest corner of 8th and H.

BY MR. GOREN:

Where were they exactly when you saw them?

A About where this black spot is.

[209] MR. GOREN: He has pointed to an area on the sidewalk that is darker. It looks like a little shadow of a helicopter or something right above it.

THE COURT: Is that up 8th Street?

MR. GOREN: It's slightly up 8th Street on the west side of the street.

THE COURT: All right.

MR. GOREN: You can go back up to the witness stand.

THE WITNESS: (Witness complies.)

MR. GOREN: Court's indulgence one moment.

(Pause.)

MR. GOREN: Let me do this without asking Mr. Montgomery to come back down.

BY MR. GOREN:

Q Mr. Montgomery, I want you to look at what has been marked as Government's Exhibit No. 6 and ask if you recognize what you see there.

A Yes.

Q In a loud voice.

A Yes.

Q Okay.

What is that a picture of?

A The whole park.

Q Okay.

Now, you said that at some point – let me see if [210] I can hold it up here so everybody can see it.

At some point, you saw Fella and Levy and Bo-Bo and Tim-Tim, and other people who were in that group cross the street.

A Yes.

Q Can you just point to us where they crossed the street, where you saw them leave the park and where they crossed the streets?

A Yes.

Levy and them came this way. Bo-Bo and Tim-Tim came over this way between the telephone and coming this way (indicating).

Q All right.

A Some other people went that way, too.

THE COURT: I can't hear you.

MR. GOREN: Say that again.

THE WITNESS: A few other people came up across this way, too.

BY M. GOREN:

Q When you say this way, you're talking about the way that Tim-Tim and Bo-Bo went, or the way Levy and Fella went?

A Tim-Tim and Bo-Bo went.

Q Okay.

That was here, not on the corner, but in here in [211] this area?

A Yes.

Q All right.

MR. GOREN: I have no further questions, Your Honor.

THE COURT: Ladies and gentlemen, this is a convenient time to take a break. It is now about three or four minutes after three. Let's be back here in twelve minutes, and we'll sit until 4:30. Okay?

Again, do not talk about the case. Keep an open mind at all times. I'll see you back here in about twelve minutes or so.

You're on the stand. Do not talk with anybody while you're on the stand. If you want to go to the bathroom or anything like that, the marshal will take you to the bathroom. You can have a seat right down there, but don't talk with anybody.

(Whereupon, a brief recess was taken.)

* * * * *

[1] SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CRIMINAL DIVISION

F-8617-84

UNITED STATES OF AMERICA

vs.

TIMOTHY CATLETT,

Defendant

F-6914-84

UNITED STATES OF AMERICA

vs.

ALPHONZO L. HARRIS,

Defendant

F-8613-84

UNITED STATES OF AMERICA

vs.

RUSSELL L. OVERTON,

Defendant

F-8614-85

UNITED STATES OF AMERICA

vs.

LEVY ROUSE,

Defendant

F-5125-85

UNITED STATES OF AMERICA

vs.

FELICIA A. RUFFIN,

Defendant

F-8616-84

UNITED STATES OF AMERICA

vs.

KELVIN D. SMITH,

Defendant

F-8513-84

UNITED STATES OF AMERICA

vs.

CHARLES S. TURNER,

Defendant

Washington, D.C.
November 13, 1985

Carolyn Sargent-Burns, CP, RPR, CSR
Official Court Reporter Telephone: 879-1036

* * *

[5] DIRECT EXAMINATION BY MR. BEHM:

Q Mr. Thomas, would you state your full name and spell your last name for the record?

A Maurice Antoine Thomas, T-h-o-m-a-s.

Q How old are you, Mr. Thomas?

A Fourteen.

Q Where do you live?

A 1012 Ninth Street, Northeast.

MR. PALMER: Could the witness go a little slower, Your Honor?

THE COURT: Yes.

1029 what, please?

THE WITNESS: 1012 Ninth Street, Northeast.

THE COURT: 1012 Ninth.

Now, would you speak just a little more slowly, please.

BY MR. BEHM:

Q Where do you go to school, Mr. Thomas?

A I attend Hamilton Junior High School.

Q Now, I would like you to look around the courtroom and tell me if you recognize anybody sitting in the courtroom.

A Yes.

MR. ROBINSON: Objection, Your Honor. Be more specific. It is a large courtroom.

[6] THE COURT: I'm sure he will do that, Mr. Robinson.

BY MR. BEHM:

Q Would you step down from the witness stand and point to the individuals you know and tell us their name, if you know it, and what name you know them by, and tell us what they're wearing? Just step down.

THE COURT: Come right over here, please.

[Thereupon, the witness left the stand.]

BY MR. BEHM:

Q Come right down here in front of the table, Mr. Thomas. Start right over there.

THE COURT: Start at this end, on the front row.

THE WITNESS: I know him.

THE COURT: What is his name?

THE WITNESS: I know him as Snotrag.

THE COURT: All right. Now, what is that person wearing, please?

THE WITNESS: He's wearing a blue suit, a blue shirt with a blue tie.

THE COURT: All right.

THE COURT: That, ladies and gentlemen, he's identified Timothy Catlett.

BY MR. BEHM:

Q Who is the next person you know, Mr. Thomas?

A I know him. They call him as Bo.

[7] THE COURT: Which one is he?

THE WITNESS: There.

THE COURT: What is he wearing?

BY MR. BEHM:

Q What's he wearing?

A A blue suit, a white shirt with a striped tie.

Q Okay, tell us the next person – Your Honor, may the record reflect that he has identified the defendant Russell Overton?

THE COURT: It may.

BY MR. BEHM:

Q Who is the next person you know, Mr. Thomas?

A Levy.

Q What is he wearing?

A He wearing a gray – a gray jacket with gray stripes and a white shirt with a black tie.

Q Do you know his last name?

A No.

MR. BEHM: Your Honor, may the record reflect that the witness has identified Levy Rouse?

THE COURT: It may.

BY MR. BEHM:

Q Who is the next person you know, Mr. Thomas?

A I know this man as Hollywood.

THE COURT: Go back and point to the person.

[8] MS. VAN SUSTEREN: We'll stipulate, Your Honor.

THE COURT: What?

MS. VAN SUSTEREN: We'll stipulate he knows Mr. Thomas.

THE COURT: Do you know him as Hollywood?

THE WITNESS: Yes.

THE COURT: Do you know his last name?

THE WITNESS: No.

BY MR. BEHM:

Q Who is the next person you know?

A I know this one as Fella.

Q What's he wearing?

A He's wearing a black suit – a black suit jacket with a –

MR. ELSTEN: Could the witness take his finger out of his mouth, Your Honor?

THE WITNESS: – a white shirt with a gray tie.

MR. ELSTEN: No objection.

THE COURT: All right, that is –

MR. BEHM: May the record reflect the witness has identified Charles Turner?

THE COURT: It may.

BY MR. BEHM:

Q Who is the next person you know, Mr. Thomas?

A Cris.

[9] Q And what's he wearing?

A A brown suit with a white shirt.

Q What kind of tie does he have on?

A He don't have one on.

MR. BEHM: Your Honor, may the record reflect the witness has identified Cris Turner?

THE COURT: It may.

BY MR. BEHM:

Q Who is the next person you know?

A Clifton Yarborough.

Q What's his name?

A Clifton Yarborough.

Q And what's he wearing?

A He's wearing a blue suit with a – a white shirt with a blue tie.

MR. BEHM: Your Honor, may the record reflect that the witness has identified Clifton Yarborough?

THE COURT: It may.

MR. BEHM: You may resume the witness stand.

[Thereupon, the witness returned to the stand.]

BY MR. BEHM:

Q Mr. Thomas, do you remember the day that a lady was killed in an alley between Eighth and Ninth Streets?

A Yes.

Q On that day, as of that day, how long had [10] you known the individual who you identified as Snotrag?

A The next day.

Q No, how long – as – on the day that the lady was killed, as of that date, how long before that had you known the, the person you identified as Snotrag?

A I known – I know him for – I know him for quite awhile before that happened.

Q Where had you seen him?

A Around – around the way, around like where he – right around like Eighth Street or, or K.

Q As of that day, how long had you known the person who you identified as Levy?

A I knew – I didn't – I knew Levy through – I knew him.

Q How did you know him?

A I've known him through Katrina Ward.

THE COURT: You what? Knew who?

THE WITNESS: Katrina Ward.

THE COURT: Is that a female?

THE WITNESS: Yes.

BY MR. BEHM:

Q Where did you see Levy?

A I be – I see him out on the streets. I be seeing him.

Q Had he ever been to your home?

[11] A Yes.

Q Now, how long had you known the person who you identified as Hollywood as of the day the lady was killed?

A I knew Hollywood for – I know him –

Q Where did you know him from?

A From coming up to the center to see – huh?

Q What center?

A The Northeast Neighborhood House.

THE COURT: What is that? The Northeast Neighborhood what?

THE WITNESS: House.

BY MR. BEHM:

Q Had you known him before the lady was killed in the alley?

A Yes.

Q Now, how long had you known the person whom you identified as Fella?

A I knew Fella since I was about in the sixth grade.

Q You've known him since you've been in the sixth grade?

A Yes.

Q And what grade are you in now?

A Eighth.

Q Now, do you know if Fella has a brother?

A Yes.

[12] Q What is his brother's name?

A Crissie.

Q Okay. Is that the person who you earlier identified in court?

A Yes.

Q How long have you known the person whom you identified as Crissie?

A I knew him longer than I knew his brother.

Q You knew him longer than you knew Fella?

A Yes, I did.

Q And how long had you known the person whom you identified as Clifton Yarborough?

A I knew Clifton since I was about in the fourth grade.

Q Now, where did you live, Mr. Thom on October 1, 1984, the day the lady was killed?

A 1012 Ninth Street, Northeast.

Q And where did you go to school on October 1, 1984?

A I attended Eliot Junior High School.

Q Did you go to school that day?

A Yes, but I came home a half a day.

Q What time did you come home?

A About twelve o'clock.

Q Now, what did you do when you got home?

A I was – excuse me. I was – the rain had – I was [13] wet, so I went and put on my night clothes and laid down and looked at TV.

Q Now, did there come a time when you received a telephone call?

A Yes.

Q And who was that call from?

A My Aunt Barbara.

Q About what time did she call you?

A About 3:30 or quarter to four.

Q And what did she say?

MR. ROBINSON: Objection.

THE COURT: Sustained.

MR. BEHM: Well, Your Honor, we are not introducing for the truth of the matter asserted.

THE COURT: As a result of what she said, what happened?

BY MR. BEHM:

Q As a result of what she said to you on the phone, what did you do?

A She asked me –

THE COURT: Not what she asked you. Did you do something as a result of what she asked you?

BY MR. BEHM:

Q What did you do after you talked to her on the phone?

[14] A I put on my clothes.

Q And where did you go?

A To her house.

THE COURT: What was the name of the girl, please?

THE WITNESS: Barbara.

THE COURT: Barbara.

BY MR. BEHM:

Q Why were you going to her house?

A To have dinner with her.

Q Where did she live on that day?

A She lived on Eleventh Street.

Q Do you know what on Eleventh Street, between what other streets?

A Eleventh and – Eleventh and H.

Q Did she live right on the corner of Eleventh and H?

A No, she – she lived like – okay, there's a store on the corner of Eleventh and H. Okay, the side of the store is on Eleventh Street. Okay, you pass – there is a big house. Her house is right on the alley. The alley – if you go through the alley, you will go straight through Tenth Street.

Q Is the next street up I Street?

A No.

Q Okay. What did you do when you got to your Aunt Barbara's house?

[15] A I took off my coat and put down my umbrella and washed my hands and sat at the table and we ate.

Q Who finished dinner first?

A She had.

Q Now, what did she do when she finished dinner?

A She washed our plates, put on her coat, got her umbrella, and went around to my house.

Q What did you do?

A She told me after I finished eating to go wash my plate and get her umbrella from her room, by her door, and come out and close the door tight because the top lock would go on.

Q What did you do after you finished eating?

A I washed up my plate, went to her room and got the umbrella.

Q What did you do?

A I walked out, locked the door, and went to Eleventh Street. I hit the – I went to Eleventh and Eighth.

THE COURT: You're going a little too quickly. Would you slow it down?

BY MR. BEHM:

Q You made a left?

A Yes.

Q On H Street, right?

A Yes.

[16] Q Where did you go then?

A I went – I walked down to Eighth Street and stopped at the –

THE COURT: What street did you go down, Eleventh Street?

THE WITNESS: Yes.

BY MR. BEHM:

Q What did you do when you got to Eighth Street?

A Stopped at the light. I crossed by Tenth Street, crossed on the street of Tenth Street, the light.

Q And you were walking down H Street at this point; is that right?

A Yes.

Q Okay, after you crossed Tenth Street, where did you go?

A I was on – I was – I had to cross – I would like still be on Eighth Street. I was on the same side of Murray's Steak House.

Q Okay. And where is Murray's Steak House located?

A On Ninth and H.

Q On the corner of Ninth and H Street?

A Yes.

Q What did you do when you reached the corner of Ninth and H Street?

A I had made a right, and I walked up and I had [17] glanced up the alley and then I had walked –

Q What alley is that?

A The alley on Ninth and I.

Q Okay.

A And then I went over to the – across the alley, and then I had to stop and went up a little bit more because I was looking up the alley.

Q Okay, when you looked up that alley, what did you see?

A I just saw people with someone in the middle.

Q Okay. Now, did you know who that person was in the middle at that time?

A Yes.

Q No, the person in the middle, did you know who that person was?

A Oh, no, I didn't.

Q So, when you saw this group of people around another person, what did you do next?

A Excuse me?

Q What did you do next after you saw this group of people in the alley around another person?

A I just stood there.

Q What happened next?

A And then I just saw someone patting her down.

Q Would you stand up and show us how this someone was [18] doing it to the person?

A Like this, patting her pockets and – her pockets on her.

Q Okay, you may resume your seat.

May the record reflect the witness patted himself on the chest and on his pants pocket?

THE COURT: It may.

BY MR. BEHM:

Q Now, did you recognize the person who was patting her down?

A Yes.

Q Who was that person?

A It was Snotrag.

Q After he patted her down, what, if anything, did you see him do?

A He had put something in his pocket. I don't know if it was from her or did he drop anything. I saw him put something in his pocket.

Q And then what happened?

A Then he hit – when she fell, everyone else started hitting. I heard her say can someone please help me. That's when I went up the street.

Q You say you saw Snotrag hit this person?

A Yes.

Q When he hit her, what happened to her?

[19] A Everyone else started hitting.

Q When everyone else started hitting, did you know anyone else –

A She fell down.

Q No, did you recognize any of the other people that were in that group?

A Yes.

Q Could you please tell us who those other people were?

A It was Snotrag, Clifton, Levy, Fella –

THE COURT: Wait a minute, Snotrag, Clifton, Levy. Who else?

THE WITNESS: Fella.

THE COURT: Fella?

THE WITNESS: Uh-huh. Hollywood, Crissie and Derrick.

BY MR. BEHM:

Q Do you see Derrick in the courtroom today?

THE COURT: Look around and see if you see him.

THE WITNESS: No.

BY MR. BEHM:

Q Now, did everybody in that group start hitting the lady?

A Yes.

Q Did the lady – did you hear the lady say anything?

[20] A She said could someone please help me.

Q What did you do next?

A I just – I ran up the street. And the first person I saw was my Aunt Barbara, so I told her.

Q Where was she?

A She was on my front porch.

Q Okay. Did you say anything to her?

A Yes.

Q What did she say to you?

A I – what did she say to me?

Q Yes, sir.

A She didn't say nothing. She told me to come in and tell her what I had to tell her.

Q Did you tell her what you had seen?

A Yes.

Q What did she tell you?

MR. ROBINSON: Objection.

MR. ELSTEN: Objection.

THE COURT: Did she make some statement to you, sir? Did she tell you something, yes or no?

THE WITNESS: Did she tell me anything?

THE COURT: Uh-huh.

THE WITNESS: No, she didn't tell me nothing.

THE COURT: Did she say something to you as a result of your having told her what happened?

[21] THE WITNESS: When I told her, she said don't say nothing to –

MR. ROBINSON: Objection.

THE COURT: Overruled.

BY MR. BEHM:

Q What did she tell you?

A When I told her what I saw and – she just told me don't say nothing to no one else.

Q Now –

THE COURT: Now, who is that, your aunt?

THE WITNESS: Yes.

THE COURT: How far did she live from that alley on Ninth Street?

THE WITNESS: From the alley you could – she live right on Eleventh Street. You make a left and go back down and keep – you go past Tenth Street, but the next corner where the church – a red church, you can cross that street.

THE COURT: How did you get to her house from that?

THE WITNESS: How did I get to her house from my house?

THE COURT: From where you were looking in the alley, how did you get to your aunt's house?

THE WITNESS: I left out her gate and I locked the gate. She live on Eleventh and H. I came out her gate as soon as I locked the gate.

[22] MR. BEHM: Your Honor, if I could interrupt.

BY MR. BEHM:

Q Where was your aunt when you told her what you had seen in the alley?

A On my front porch.

Q Your front porch?

A Right.

Q What was that address?

A 1012 Ninth Street, Northeast.

THE COURT: You went to your house, not your aunt's house?

THE WITNESS: Yes.

BY MR. BEHM:

Q Had you seen other people in the alley that day when you looked up and saw other people in the alley?

A Yes.

Q Were you able to recognize them?

A No.

Q Why not?

A Because I didn't get a good look at them.

Q Where were they standing in relation to the group that you just described?

A They was standing back from them.

Q Now, how certain are you that that was Snotrag that you saw in the alley?

[23] A Because –

Q How certain are you?

A I'm – I'm sure it was him.

Q And how did you recognize him?

A By the way he's built and the shirt he wear with white stripes up it.

Q What kind of shirt was it?

A It was a – it was a tank – like a shirt tank like, tank top like.

Q And what color was it?

A It was blue with white stripes.

Q Did you see his head that day?

A No, I saw the back of it.

Q You saw the back of his head?

A Yes, I did.

Q And did that help you to recognize him?

A Yes.

Q Now, how certain are you that you saw Clifton Yarborough in that group in the alley around that lady that day?

A Yes, I'm sure.

Q And how did you recognize Clifton Yarborough?

A By his face.

Q Did you see the front of his face that day?

A Yes.

[24] Q How certain are you that you saw Levy in the alley that day, Levy Rouse?

A I'm sure I saw him in the alley.

Q How did you recognize him?

A By his face.

Q How certain are you that you saw Fella, Charles –

MR. ELSTEN: Objection, Your Honor. The ID has not been placed in doubt yet. He's rehabilitating him before it's been placed in doubt. He should be asked did he see him. He should be asked did he see him or how did he recognize him.

THE COURT: Overruled.

BY MR. BEHM:

Q How certain are you, Mr. Thomas, that you saw the person you identified as Fella, Charles Turner, in the alley that day?

A Yes, I saw him.

Q How certain are you you saw him?

A I'm positive.

Q How did you recognize him?

A By his tallness, his build, and the shirt he have. Like Snotrag had the little vest like with the blue stripe.

Q What color was his shirt?

A The same color blue with white lines.

Q Was it exactly the same as the shirt you described [25] Snotrag as wearing?

A Yes.

Q Did you see the – his head that day?

A No,

Q What did you see?

A How I recognized him?

THE COURT: Uh-huh.

BY MR. BEHM:

Q Yes.

A I recognized him by the height and the way he was built up here and the back of his head.

Q You did see the back of his head?

A Yes, I did.

Q Now, how certain are you that you saw Crissie in the alley, in that group, that day?

A I'm not that sure about Crissie.

Q What led you to believe that it was Crissie in the alley?

A It was someone that was shaped liked Crissie and built like Crissie at the top, but I'm not sure that it was Crissie.

Q Did you – how tall was this person? Was he tall, medium, short, what?

A He was like shortlike, his height.

Q Okay. How certain are you that you saw Hollywood [26] in the alley, in the group, that day?

A I'm not that sure about Hollywood.

Q What was it that led you to believe that it was Hollywood you saw in the alley that day?

A Because I saw someone who was built like him up top and his size and his height.

Q And did you see the back of his head?

A Excuse me?

Q Did you see the back of this person's head who you thought was Hollywood?

A Yes.

Q Now, how certain are you that you saw Derrick in the alley, in that group around the lady, that day?

A I'm not that sure about Derrick.

Q How do you – what wore the things that led you to believe it was Derrick whom you saw?

A Because I saw someone who was tall like Derrick, that was skinny like Derrick.

Q And where had you known Derrick from?

A From Katrina Ward.

Q Now, after you went to your house and spoke to your Aunt Barbara, what did you do next?

A After that, I went to the store for her.

Q What store did you go to and why did you go there?

A She would like to have – she wanted a soda that day.

[27] Q Okay. And which store did you go to?

A To Framer's, the store right next door to my house.

Q And what did you find when you got there?

A He didn't – he didn't have a Pepsi or Coke, so I had to go to the store down Ninth and I.

Q Okay. And did you see anybody when you got down to that store on Ninth and I?

A Yes.

Q Who did you see?

A I saw Snotrag.

Q Did you see anybody else there?

A Excuse me?

Q Did you see anybody else there at that store?

A Yes, a person he was talking to.

Q And what was that person's name, if you know?

A Know him by?

Q Yes.

A I know him by Charles.

Q Do you know his last name?

A No.

Q That's not Charles Turner, the person you identified as Fella, is it?

A No.

Q Okay. Now, did you – did you hear Snotrag say anything to the person you knew as Charles?

[28] A Yes.

Q What did he say?

A He said we had to kill her because she spotted someone he was with.

Q Now, Mr. Thomas, I'd like you to come down here. Step down. I'm going to show you what's been moved into evidence and identified – marked for identification as Government Exhibit 9.

[Thereupon, the witness left the stand.]

Stand right over here so all the people behind you can see.

Now, do you recognize what this photograph depicts?

A Ninth Street.

Q Now, do you see Ninth Street on that photograph?

A Yes, right here.

Q You're going to have to keep your voice up. Where is it?

A Right here.

Q Okay. Would you point to where you were standing when you looked up the alley?

A About –

THE COURT: What exhibit number is that, please?

MR. BEHM: This is Government's Exhibit No. 9, Your Honor.

THE WITNESS: Right here.

[29] BY MR. BEHM:

Q Do you want to take this pen and mark your initials right where you were standing?

MS. ROBERTS: Your Honor, may I move up?

THE COURT: Surely.

MS. ROBERTS: Thank you.

THE COURT: As long as you don't get in the jurors' way.

MS. ROBERTS: I'm going to try not to, Your Honor.

THE COURT: Anybody else want to go up there and look, you certainly may do so.

BY MR. BEHM:

Q Make your initials just a little bit bigger than that, Maurice, Mr. Thomas.

A [The witness complied.]

Q Put a circle around your initials.

A [The witness complied.]

Q Okay. Now, I'm going to show you what's been marked as Government's Exhibit 11 and moved into evidence. Do you recognize what this photograph depicts, Mr. Thomas?

A Yes.

Q What is that?

A This is Ninth Street and this is Shontel's (phonetic).

Q Okay. Do you see –

[30] THE COURT: What number? Five, you say?

MR. BEHM: This is Government's Exhibit 11, Your Honor.

THE COURT: Eleven.

BY MR. BEHM:

Q Do you see the alley in this picture that we're talking about?

A Yes.

Q Where is that?

A Right here.

Q Is that the entrance to the alley that you were looking down?

A Yes.

MR. BEHM: Okay, thank you. You may resume the stand.

[Thereupon, the witness returned to the stand.]

I have no further questions of this witness, Your Honor.

THE COURT: Just a minute. What time is it?

MR. GOREN: It's 2:30.

THE COURT: Ladies and gentlemen, you all have just been sitting a half-hour, but we've been in here an hour, so I'm tired and I want to take a break. This is a convenient time to take it. Let's take a break, please, until a quarter of three.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CRIMINAL DIVISION

F-8617-84

UNITED STATES OF AMERICA

vs.

TIMOTHY CATLETT,

Defendant

F-6914-84

UNITED STATES OF AMERICA

vs.

ALPHONZO L. HARRIS,

Defendant

F-8613-84

UNITED STATES OF AMERICA

vs.

RUSSELL L. OVERTON,

Defendant

F-8614-85

UNITED STATES OF AMERICA

vs.

LEVY ROUSE,

Defendant

F-5125-85

UNITED STATES OF AMERICA

vs.

FELICIA A. RUFFIN,

Defendant

F-8616-84

UNITED STATES OF AMERICA

vs.

KELVIN D. SMITH,

Defendant

F-8513-84

UNITED STATES OF AMERICA

vs.

CHARLES S. TURNER,

Defendant

Washington, D.C.
Wednesday, December 4, 1985

Carolyn Sargent-Burns, CP, RPR, CSR
Official Court Reporter Telephone: 879-1036

* * *

[44] CLOSING ARGUMENT ON BEHALF OF THE GOVERNMENT

MR. GOREN:

May it please the Court. Ladies and gentlemen. A dollar bill is a friend of mine, a nickel, a dime, it's loveboat time. I need some money. I've got to have some money.

It all began with a song in a park in northeast Washington, and it ended in a brutal senseless murder. You have sat here, ladies and gentlemen, for six weeks now. You have heard a great deal of testimony. You have [45] evidence of a brutal murder committed in the course of a kidnapping, evidence of a brutal murder committed in the course of an armed robbery.

You have heard how a number of people, including all of the defendants here on trial, gathered in that park in northeast Washington on the corner of 8th and H Street. You have heard how they were singing, joking, playing, watching, waiting; how there was a conversation that they participated in; that they discussed and planned a robbery.

You have heard how they selected their victim. You have heard how they followed her as she walked down

H Street sometime around 4:30, quarter to five that afternoon; how some of them went to the H Street side to follow her up to the alley and some went to 9th Street.

You have heard how they shoved her into that alley and began to beat her. You have heard how they dragged her down the alley, carried her down the alley, all in a group after the fierce beating, where she slipped or fell and was dropped on the ground and beaten, kicked some more.

You have heard how they dragged her by her legs into the garage, that dimly lit garage, trash strewn all about; how they took her chains, how they took her rings, how they took her purse, how they stripped her of her clothes, how they fought over the proceeds.

[46] You have heard how Levy Rouse, with all of them around watching, some yelling encouragement, took some kind of pole and shoved it into her rectum with such force that it penetrated the rectum wall, eleven inches into her body.

You have heard how they beat her and tortured her and fled and left her there to die. Ladies and gentlemen, you have heard about a number of people participated in, assisting each other, helping commit a kidnapping, taking Ms. Fuller into the alley with the purpose of robbing her; taking her further into the alley into that garage.

You have heard evidence of how all of these people helped, assisted, aided each other in committing an armed robbery. And, you have heard how in the course of that kidnapping, in that robbery, Ms. Fuller was beaten to death.

Moreover, ladies and gentlemen, and following Judge Scott's instructions, you've heard what each of the defendants did independent of the others, what each of their actions were, what each of them did to assist in the kidnapping, assist in the robbery, assist in the beating that led to her death.

You have heard how each one of them aided in making sure that the kidnapping succeeded, that the armed robbery succeeded, and that she died.

You have heard how they each participated, knowing [47] that a robbery was going on, knowing that they were kidnapping her in furtherance of those crimes.

You have heard how each one of the people here on trial, what each one did, how each one aided in committing the crime of kidnapping, armed robbery and felony murder.

Very soon after I have had a chance to address you and each of the defendant's lawyers has had a chance to address you, Judge Scott will instruct you in the law, and you will go back into the jury room for the last time to deliberate, to think about the testimony, to look at the exhibits, and to make a final decision about the guilt of these ten people.

Before you do that, make a decision about what happened, the facts, because that's clearly your job at this point, to decide what the facts are, decide what to believe. You will be asked to take those facts, understand the law as Judge Scott will instruct you, and make a final decision.

What I suspect he'll tell you is a number of things about the law so you will understand what the principles of the law are. One of the most important

principles in this case must be very obvious to you now. There is ten people here. There were more than ten people involved in the activity that took place in that park, in that alley, in [48] that garage on October 1st.

You heard testimony from several of them. You have heard about some of the others. It is important, knowing that, to understand that not – in order to find any one of these defendants guilty, you don't have to find that each one of them did every act that constitutes the commission of a kidnapping or armed robbery, or that each one of them delivered a death blow.

What you do have to consider, what you do have to understand is a concept that's referred to as aiding and abetting. And what I expect Judge Scott to tell you is that an individual who participates in a crime in some way does not – in order to be found guilty, does not have to personally commit every one of the acts involved in committing that crime; that anyone who knowingly associates themselves in some way with the actions of others with the intent to commit a crime is guilty as if they had done all of the acts.

That is, if someone participates in some way to help commit the kidnapping or the robbery, they are as guilty as is the principal, the person who does the main act. What you have to find is that each of them engaged in some conduct, some conduct, to further the offenses of kidnapping or robbery. Now, you may hear some argument from some of the [49] lawyers, "Well, my client was maybe just there, physically present, didn't do anything." And you are going to hear from Judge Scott that even mere physical presence, just being there – if you find that the mere physical presence, the being there was intended to aid, to help

other people in committing the crime, is enough to make someone an aider and abetter.

What I would submit to you is that the evidence shows that none of the people here were merely present; that each of the people here, each of the defendants did something that day to make sure that the kidnapping succeeded, did something that day to make sure that the robbery succeeded, and did something that day to make sure that the murder occurred.

You will be told that aiders and abetters don't have to have the specific intent to commit that crime; that the crime could have been committed in some way other than they originally thought it was going to happen, not necessarily the way that it was planned. That there need be no direct communication between people, that they didn't need to talk about ever ing that was going to happen. That if they just saw what was happening, indicating by their actions that they knew what was happening, indicated by their actions that they wanted it to happen, participated in some way, no one ever had to talk about it at all.

[50] If someone came upon what happened in that alley and joined in in the beating, joined in and picked up some of the property, they are guilty of all the crimes as if they had planned it, talked about it, discussed it from the very beginning.

Thinking about that in terms of the kidnapping itself, anyone who beats Ms. Fuller, anyone who followed her in an attempt to trick her, and dragged her into the alley, anyone who helped carry her down the alley, anyone who was around her wanting to help hide her while they carried her into the alley, anyone who was yelling encouragement, anyone who went to

the other side of the alley in an effort perhaps to cut off her avenue of escape, anyone who was a lookout, aiders and abetters, guilty of kidnapping.

Thinking about the armed robbery, anybody who thought of the idea and followed across the street supporting the other people, anyone who helped pull her into the alley, anyone who beat her when she was initially taken into the alley, anyone who carried her or -- in a supportive way, went down the alley with the people who were carrying her, guilty of armed robbery.

Anyone who beat her when she got down to the garage, anyone who took her property, her coat, her umbrella, her money, her jewelry, her change, her ring, anyone who stood in that doorway intending to make sure [51] that no one else could see what was happening in that garage while the robbery went down, guilty of armed robbery.

And you can think for yourselves the reasons for that kind of a law. Anybody who helps someone else commit a crime has to take the responsibility as if they had done the entire crime themselves.

One kick, yelling encouragement, taking a ring, aiders and abetters and guilty. They don't need to intend the particular act. No one had to intend that the pipe be inserted into Ms. Fuller's rectum; that her clothes be taken off of her. No one had to intend the specific acts themselves.

An aider and abetter is liable for any criminal act which in the ordinary course of things would have naturally and probably happened. If two or more people go into a store knowing that someone is going to take something from the counter and steal it, and instead that person goes in and slaps somebody around and robs them, assaults them, the person who

thought that only a minor crime was going to be committed there is guilty of all the crimes that are committed by the other person, because they are the natural and probable consequences of those acts. Aiders and abetters are guilty as if they had done everything, as if they had planned everything, as if they had intended everything to happen.

[52] Now, you also will be instructed on what it is to commit a kidnapping, what it is to have to find from the facts that each of these defendants, independent of each other, did either directly or as aiders and abetters in kidnapping Catherine Fuller on October 1st.

Now, you will be told that there are several elements of the offense, several things that you have to find in order to find these defendants or each defendant, any defendant, guilty of kidnapping.

First, that the defendants directly or either as aiders and abetters, seized, carried away, confined Catherine Fuller against her will. That she was held, detained, for some purpose of benefit to these defendants, or of some purpose of benefit to any of these defendants, speaking about aiders and abetters.

The kind of purposes that might be of benefit to these defendants in that situation is to help them commit a robbery, to facilitate the robbery. Isn't that why they dragged Catherine Fuller into that alley, to make the commission of the robbery easier, where nobody could see them, where it was less likely that they would be caught, where it was easier to hide her body?

Isn't one of the purposes for taking her back into that alley for kidnapping her, for confining her in that garage, to make it less likely that she would be found [53] soon so that they could get away.

There is no set time that people have to be detained. There is no set distance that people have to be dragged. It's the acts of seizing, confining, carrying away for a purpose of benefit to these ten people or to any one of them.

Here the crime of kidnapping is a separate and distinct offence, as long as you find that it wasn't incidental to the robbery. What does that mean? Where the kidnapping places the victim, Catherine Fuller in this case, in greater danger, where it makes it more likely that she would be robbed and that the robbery would succeed, where it's less likely that the defendants would be caught, then the kidnapping is separate from the robbery. They could have robbed her on the street. They could have beat her on the street. But, they didn't. They dragged her into that alley, not just into the mouth of the alley, all the way down the alley. Not just all the way down the alley, but into that old vacant garage, where the robbery took place, where all of – of her effects, her clothes, her purpose, her keys, her boots, the robbery took place in that garage where she was kidnapped to.

And you will be told by Judge Scott, I expect, that in order to find these defendants guilty of armed robbery, you have to find that they either directly or as [54] aiders and abetters took property from Catherine Fuller, property of some value against her will. That they took possession of the property by force and violence; that they took it from her immediate actual possession; that it was off of her person, from her body; that they carried the property away; that they did so without any right to do it, and they did it while armed with a dangerous weapon.

Now, the dangerous weapon in this case, generally a dangerous weapon, you'll hear, is anything, anything

that is likely to produce great bodily harm or death. And, in deciding that, you look at the way something was used to decide whether it was used as a dangerous weapon. Here that pipe was used in a way that did cause great bodily harm and helped lead to – and as you heard from Dr. Bray, in and of itself would have led to, in all likelihood, Catherine Fuller's death.

And you will also hear, and you should understand if you listen to the elements of the offense, the things that have to be found, that the robbery wasn't over until everybody left, until they carried the proceeds away; that the weapon was used in the course of the robbery, making it an armed robbery.

And finally you will be instructed on what felony murder is. There are two counts of felony murder. One count is tied to the kidnapping charge and one count is tied [55] to the armed robbery charge. You should understand that there weren't two murders, but there are two theories as to how the murder – why the murder occurred.

Felony murder, generally, you will be instructed, is where the defendants or defendant inflicts injuries upon the decedent, upon the person who died, and it is from those injuries that that person dies.

And second, that those injuries were inflicted by the defendant while perpetrating a crime, a felony. Now, there are two counts. One and two theories. That they injured Ms. Fuller, that they beat her and they inserted that pipe into her in the course of kidnapping her. And the second theory is that they beat Ms. Fuller and inserted that pipe in the course of robbing her.

I would submit to you that they did both. That it was in the course of the kidnapping they kicked and

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I would submit to you that they did both. That it was in the course of the kidnapping they kicked and

beat her as they dragged her down the alley; that the kidnapping was still ongoing when they inserted the pipe. She was still being confined in that garage. And that it was in the course of the robbery that they beat her and inserted the pipe while her property was being taken away and taken off of her. That they are guilty of both counts of felony murder.

You will also be told that this is not a crime in which the Government has to prove or you have to find that any [56] of the defendants had a specific intent to kill Ms. Fuller. No one needs to show that they wanted to kill her at the time. Any killing, even without the intent to kill, committed in the furtherance of a kidnapping, any killing, even if committed without the intent to kill, in furtherance of an armed robbery, is felony murder.

Even if – and this is not the case here I would submit to you – even if the killing is accidental. Anybody who commits a robbery and someone dies during the course of that, guilty, felony murder. Anyone who commits a kidnapping and someone dies in the course of that, guilty of felony murder kidnapping.

And you are going to hear some special instruction about the fact that there is more than one person here on trial in terms of the felony murder. Again, under the theory that aiders and abetters are guilty as are the principals, as are the people that do most of the act.

If a number of people aid and abet, help each other commit a felony, commit a kidnapping, commit a robbery, and only one of them kills somebody, they are all guilty of felony murder. Both the person who actually did the killing and the person who aided and abetted in the commission of the robbery, even if they

didn't want to kill anybody, didn't think about killing anybody, only thought about robbing someone, they are guilty, all of them.

[57] And this is true as long as the killing was committed in the – or the injuries were caused in the furtherance of the commission of a felony, in furtherance of the commission of the kidnapping or the robbery; or, again, if the killing was the natural and probable consequence of the actions that these people took in committing the robbery or in committing the kidnapping.

Now, you are going to hear a number of other instructions about other principles of law, but that is what I will expect you will hear Judge Scott tell you about the crimes of kidnapping and armed robbery felony murder and the concept of aiding and abetting.

Before you get to that, before you can begin to think about – about the guilt of these defendants as applies to those crimes – and again, as the judge instructed I emphasize, too, each defendant deserves to be judged on his own actions, the evidence against him. You shouldn't let your opinion about what any one defendant did, influence your opinion about what anyone else did.

But before you can get to that, you have to relive what happened on October 1, 1984. You have to go back there. You have to put yourself there for the five or ten-minute period when Catherine Fuller was beaten to death and robbed.

You have to understand what happened that day [58] before you can make a judgement about the guilt of these ten people. And, in doing so, you have to understand that that was a different world than the world of this courtroom. That was a world that when

we first gave opening statements, the Government and the defense lawyers mentioned to you, told you about a world that maybe you didn't understand at all, that you maybe didn't have any knowledge of. It was beyond your own experience.

You may think some of the witnesses are people who are very much unlike you. You may think that the witnesses are people who don't think like you at all. A world of nicknames, Chopper, Go-Go Randy, Southeast Wayne, Pebbles, Girl-Girl, Smurfette, Boo, Snotrag, Monk, Bo-Bo, Luncheon Lisa, Hollywood, Fella, Crissie – names that when you walked in here meant nothing to you, but now do.

It's a world where young people smoke PCP and marijuana often and think nothing of it; a world of go-gos, a world where instead of wearing watches people tell time by what's on television. A world where loyalties to one's comrades are so much greater than to one's community or to some of the things that some of us might think are moral or right. A world where the police are the enemy.

You have to go back to that park having a difference understanding of what that neighborhood was like, and you have to put yourself there. You have to understand [59] how that park was a hub for that northeast neighborhood, where it was the meeting place, the place to meet girls; where it was the place to catch the bus, the transportation center of the neighborhood; where people were out there morning, noon and night.

You have to put yourself back in a world where the first of the month meant a – was a very important day where people got their checks, where people got paid, where the stores did a lot of business because of that.

You are going to have to go back in the jury room and openly discuss, as you have not been allowed to discuss up until now, the testimony you heard, discuss what you all believe happened that day.

And, in order to understand all of that, you have to go back there. You have to be there. You have to put yourself in the shoes and in the bodies and in the minds of people who are very unlike you.

You have to see what happened from their point of view, from the point of view of some people who are very young. You have to put yourself back there and put yourself in a role that you are unfamiliar with but that you have heard about. You have to think of an event that perhaps you could never have comprehended before you sat on this jury. You have to put yourself back there in the role of the participants of that murder, of the witnesses, of some [60] of the girlfriends of some of these young men.

You have to – in order to think about that testimony and understand it, you have to see what happened that day as a very fast-moving, a very confusing, a very emotional, a very shocking event.

You have to feel the fear, you have to feel the excitement, you have to feel the shock in order to understand what it is that people saw, what it is they did, why it is that they never said anything about it.

You have think of the role played by Melvin Montgomery who was in the park. You have to think about the role played by Harry Bennett, Derrick, by Calvin Alston, by Carrie Eleby and Linda Jacobs, Smurfette, and by Maurice Thomas.

You have to go there and be in their minds. You have to understand why they were where they were at,

how they might – given their backgrounds, given what they saw, given what they are, given their ages, given their intelligence, why they would act the way you might have seen them act on the witness stand.

You have to understand and put yourselves back there so that you can see that this fact-moving, emotional, brutal event is the kind where no two people would ever see everything that happened. That no two people who saw it could ever come away and describe it to you in the exact [61] same way.

And understanding all of that, you have to go back to October 1st, sift through the evidence, and decide what happened. So, let me, if I can, review for your or with your some of that evidence, go back to October 1st and think.

The weekend was over. For many it had been a weekend of football games, family, church. For others, some of the young people, it had been a weekend of go-gos, partying, spending time in the park with their friends, going to places like Cherry's, the Coliseum, the Panorama Room, some of the go-gos; dancing to some of the local bands, Essence, Troubles.

It was October 1, 1984. It was a new day, the beginning of a new week of the new month. It was cold. It was raining. Otherwise it was a normal day for the northeast Washington neighborhood.

It was a day that began like any other. People going to work. People going to school. Places like Springarn, McKinley, Ludlow Trailor, Elliott, Hamilton. Going down to 8th and H to catch the bus as they had often, or walking to school. People going to work, some of them driving, some of them going to 8th and H to catch the bus.

It was a day for the storekeepers to look forward to. William Freeman set up the vendor stand early in the [61] morning hoping that business would be good because it was the first of the month. You have heard about People's, Matt's records, Family Liquor, Chung King and Father & Son, the carry-outs down the street, Murray's Steak, all of them looking forward to the first of the month, the day when people had money, a day when business was very good.

People were getting paid in their jobs. People were getting Government checks. It began normally for most people, a day that would blend into the beginning the day before and blend into the day after. But for – and for those people there would be no memories of this day. It was uneventful.

But for some it would be a most memorable day, a day that they would never forget, and I'm sure now a day that you will never forget. At noon the community was awake. People were about their business.

Melvin Montgomery got up sometime late that morning and a little before twelve went to walk down to his daughter's school, past the park at 8th and H, to pick her up. And on the way down there, Melvin Montgomery, who have lived in that neighborhood for a number of years, saw Levy Rouse, the gentleman sitting there in the gray coat; saw Russell Overton, sitting there in the sweater with the purple tie, Bo-Bo he's called; saw Timothy Catlett sitting there in the white sweater and the blue jacket, Snotrag, [63] saw Charles Turner, Fella, sitting second from the right, a coat and tie.

He knew them well and he saw them in the park sometime around noon. They were the first to arrive.

Melvin Montgomery walked to school and walked back and still he saw them there.

And, from the evidence that you have heard from Melvin Montgomery, others, other people began to arrive in that park. Before the afternoon was over, Alphonzo Harris was there, Lisa Ruffin was there, Kelvin Smith – Hollywood was there.

MS. VAN SUSTEREN: Objection. Mr. Montgomery didn't say that.

THE COURT: Ladies and gentlemen, it is your recollection of the evidence that controls. It is not counsel's, either counsel's recollection.

MR. GOREN: As the afternoon wore on, people gathered in that park, and at some point Kelvin Smith, Hollywood, was there; Christopher Turner, Crissie, were there; Steve Webb was there, and Clifton Yarborough was there in that park.

They were joking, singing. Steve Webb was banging on a trash can at some point. Timothy Catlett, Snotrag, was singing a song. Melvin Montgomery didn't say that others joined in. Dancing around on the walls, joking, talking to [64] girls, watching people get on and off the bus, waiting, watching.

That afternoon Catherine Fuller, whose ankle was injured, decided not to go to work. Her husband, David Fuller, Jr., was up in his bedroom as he often is watching television. He gave her $50 to go to the store. Catherine Fuller's son, David Fuller, III, the young David Fuller, saw her on the phone, saw her with her boots on, saw her with her hair up in rollers, a scarf on, saw her getting ready to leave. It was about 4:30.

Catherine Fuller with $50 tucked in this change purse stuffed in her bra, wearing a number of rings on

her fingers, two gold chains about her neck, carrying this umbrella, wearing this raincoat, left her house. She headed down toward H Street.

And at that time, all of the defendants who sit here on trial were in the park. Snotrag, Monk, Bo-Bo, Levy, Luncheon Lisa, Hollywood, Fella, Crissie, Steve Webb, and Clifton Yarborough, and others.

Lisa Ruffin was not with the main part of the group. She was off a ways with some other people, some men, some women. You heard that there were other people there, Darryl Mercherson, Lamont Bobbit, James Michael Campbell, someone they call Burt, playing, joking, singing the money song.

[65] It was crowded. At about 3:30, Harry Bennett, who had been at some other part of the park, walked up to that area where they were. Having been at this bus stop, he walked into this area here where the telephones are, near the trashcan underneath this tree, where these little plots of grass are, where they have been singing and dancing and talking and joking all afternoon. Harry Bennett walked up and saw all of them in this area.

After a little after 4 o'clock, Calvin Alston arrived, and he, too, saw all of them in this area, saw, as Melvin Montgomery had told you, Timothy Catlett, singing; Steve Webb banging on the trashcan.

At about this time, Melvin Montgomery was still sitting in the park. Carrie Eleby and Linda Jacobs, interested in seeing Hollywood, Kelvin Smith, were making their way down toward the park somewhere up on 8th Street, a bus, walking

Maurice Thomas was probably finishing lunch at his Aunt Barbara's house up on 11th Street, a few blocks

away. He was probably getting his umbrella, his Aunt Barbara's umbrella, closing and locking the door and leaving the house and heading down the way.

And while they were making their way to the park, Calvin Alston, as he admitted, began to talk to Levy Rouse, Bo-Bo, Russell Overton; Darryl Mercherson, his friend; Snotrag, [66] Catlett; Monk, Mr. Harris, and some others, talked about getting paid, talked about robbing someone. They discussed, with all of them around listening, with Lisa Ruffin not far away – they discussed how they were going to rob someone that afternoon. They discussed robbing someone off the bus.

Calvin Alston's idea, he said. Levy Rouse thought that was a bad idea. And they discussed how they were going to get paid, how they were going to rob somebody, who they were going to rob.

Carrie Eleby and Linda Jacobs moving toward the park, Maurice Thomas walking down 11th Street toward H Street. Catherine Fuller coming from her house up to K Street between 9th and 10th, walking down 9th perhaps, you never know, walking down past Murray's Steak, LaDomingo's on the corner of 9th and H, rounding the corner, minutes from her death.

And as she walked in front of the People's, Calvin Alston said, "There goes one there. Let's rob her." And he pointed, Darryl Mercherson pointed, others pointed. Melvin Montgomery said Russell Overton, Bo-Bo, is one of the ones that pointed. They saw her.

What were they dong pointing? They were all showing each other who it was they were going to rob. And as she walked in front of People's down toward the corner of 8th and H, they decided to rob her. They

all said they're game. They all said, "Sure, let's rob her."

[67] It wasn't a vote. It wasn't a board meeting. It was a group of people who discussed a robbery, who had discussed who the victim should be, who decided that this four foot eleven, ninety-nine pound woman, was going to be their victim. They saw her. The spotted her. They agreed upon it, and then they did it.

Levy Rouse, Charles Turner, Fella, Calvin Alston, crossed first; others right behind them. Calvin didn't look behind him, he said. Alphonzo Harris, Monk, and others went to the 9th Street side. Why? To make sure she couldn't get away, to make sure nobody would catch them, to make sure there was no avenue of escape.

Clifton Yarborough crossing with Calvin Alston, "Hey, Calvin, I want you to do me a favor. Be a lookout for the police. I will give you some money later," which he did.

And Harry Bennett, who heard all of it, saw all of it and went with them. Following behind Calvin Alston and others, following behind Levy Rouse, Charles Turner, Fella; Charles Turner saying – Calvin Alston heard it – "Let's ask her the time. Let's trick her." Didn't say, "Let's trick her." "Let's ask her the time."

As they got up behind her, they walked behind her. They walked right next to her, according to Bo-Bo, Mr. Bennett and Mr. Alston. She turned her head as if somebody had [68] asked her something and that's when Charles Turner, Fella, shoved her into the alley, and Calvin Alston pausing momentarily against a car, but rushing in behind, as he admitted he did.

Linda Jacobs, Melvin Montgomery was in the park, heard them say, "Let's get that one there," saw the pointing. Minutes later he left. Carrie Eleby, Linda Jacobs, arriving somewhere in that park area minutes after they left. Maurice Thomas now may be walking down H Street between 9th and 10th getting close to Murray's Steak.

And in the alley Ms. Fuller began to struggle. She attempted to hit Charles Turner, according to Calvin. And he struck her back, the first one to hit her. Levy Rouse joined in and hit her in the head with a two by four, a big two by four in the head. You will notice – remember the patterned mark on Ms. Fuller's face as if done with something hard?

Calvin Alston joined in as did others at that point. You heard testimony, didn't you, that Mr. Catlett joined in at that point; that Mr. Harris joined in at that point coming down from the 9th Street end. That Hollywood, Mr. Smith, joined in; that Crissie, Christopher Turner, joined in; that Steve Webb joined in at that point. Hitting, kicked Ms. Fuller as she fell on the ground.

The kidnapping was complete at that point; wasn't [69] it, having taken her off street, removing her from public view, taking her down the alley somewhere in this area? But that wasn't enough. She was carried by Mr. Rouse and Mr. Turner, Fella, down the alley, down to what they call the cut, somewhere in this area right here, where she slipped or was dropped and where the beating continued.

And as she was carried down there, she was hollering, help, police, somebody help me, from the beginning hollering. Not wanting anybody to hear, not wanting anybody to see; not wanting anybody to be

caught, having committed themselves to this robbery, they carried her further into the alley where the beating continued.

Maybe she was making too much noise. Maybe they were afraid that someone would hear and look out of the window and see them. And at about this time, Maurice Thomas, rounding the corner of Murray's Steak, making a right turn, headed toward home.

Carry Eleby, Linda Jacobs, having arrived in the park looking for Hollywood, the father of her baby, come to the mouth of the alley, approaching the mouth of the alley. And, as the beating continues there, Maurice Thomas walks up behind Murray's Steaks, and looks in the alley from here and sees the beating going on. He sees Levy, he sees Cliff, he sees Crissie, he sees kelvin.

MS. VAN SUSTEREN: Objection. He said he wasn't [70] sure.

THE COURT: Excuse me.

MR. GOREN: He sees someone he thinks is Crissie who he has known for a long time; someone he thinks is Kelvin who he has known a long time. He sees Fella. He sees Snotrag. And he sees someone who he is very unsure of who he thinks is Derrick. All of them hitting her.

He stays there momentarily and leaves. Carrie Eleby and Linda Jacobs coming into the alley, sees what they think is a fight, and they're curious. To them it's a carnival, because that's the kind of people they are, maybe. It was a fight and they wanted to see it just like there's fights at the Coliseum that they want to see.

Not knowing what was happing, others in the alley at that point, Lisa Ruffin, who was in the park, who must have now something was going to be going down, who might have heard that conversation, who went into the alley, and while Ms. Fuller was being beaten and dragged down the alley, followed, chains ripped off of Ms. Fuller's neck, thrown to the ground.

And, who was seen picking them up? Lisa Ruffin looking down on the ground with Vincent Bugbay and Christopher Taylor, Mike Campbell, other people there. There wasn't any testimony about whether Burt hit anybody, but he was there. Lamont Bobbit, Darryl Mercherson.

[71] And didn't you hear testimony that each and every one of the ten people here were there at that point; that Snotrag participated in the beating, kicking and hitting Catherine Fuller; that Alphonzo Harris participated at the cut of the alley in hitting and kicking Catherine Fuller; that Bo-Bo, Russell Overton, participated in kicking and beating Ms. Fuller at the cut of the alley; that Levy Rouse continued to kick and hit Catherine Fuller at the cut of the alley, while Lisa Ruffin was picking things up and leaning down in the area where things had been thrown.

She didn't leave. She didn't help. She didn't say anything as far as the evidence shows. And if she had been a participant of that beating and looked over at Lisa Ruffin at the moment that that was going on when she was picking up things or bending down over the area where things were strewn about, would you have thought that she was helping you, supporting you, interested in accomplishing what you were interested in accomplishing? Isn't the answer to that yes?

And as they dragged, as Russell Overton dragged by the feet, causing tremendous scrape marks on Ms. Fuller's back, all shown in Government's Exhibit 45-C, dragged her from the cut four or five years into that garage over all of that broken glass, cutting her back – and the whole group moved with him into the garage, into the confines of [72] that garage where the robbery continued.

Maurice Thomas was on his way home. Carrie Eleby and Linda Jacobs had come down into the alley and stood by this fence here where they had originally seen Kelvin Smith, Hollywood, and Crissie, Christopher Turner. Dragged her into the garage and began to remove her clothes, all of which were found in that alley – I'm sorry, in the garage, her boots strewn about on the floor, her coin purse, her pants, her underwear, her panty hose, all removed in the garage as w[illegible] her rings, as was the money from this purse.

And while that was being done and was done quickly, people crowding around her body, people crowding around the front door of that garage, some yelling, "Let me see, let me see," Ms. Fuller still alive at that point. Levy Rouse goes and gets some pipe. And while Bo-Bo and Fella held her legs with Steve Webb and Calvin Alston right there – remember Harry Bennett said it looked like they were holding her legs – Larry Rouse knelt down between her legs and took that pipe and shoved it into her rectum, eleven inches; while Alphonzo Harris yelled, "Shove it in more."

The carnival was over for some people, Linda Jacobs, Carrie Eleby, who when they saw that and saw that it wasn't a fight at the Coliseum, both left. They may have been using PCP that day, but don't you think that [73] sobered them up real fast?

They saw that and they left. Standing in the back of the group, everybody else started to leave. Harry Bennett left. All of the other participants started to leave. But somebody stayed behind so that they could drag Catherine Fuller's body further out of view and hide it in that corner, a corner of the garage that couldn't be seen from outside.

They dragged her there. After all of them had witnessed what had gone on, some of them had participated directly in what had gone on, evidence, isn't there, that each and every one of these ten people was inside that garage, including Calvin Alston, Harry Bennett?

Snotrag was there fighting over the purse with Clifton Yarborough. Alphonzo Harris was there, standing near her body. Bo-Bo was there holding on to her legs. Levy Rouse was there with a pipe. Lisa Ruffin was there getting a ring from Levy before the pipe was inserted.

Kelvin Smith, who had been at the fence with Christopher Turner, moved into the garage in front of the girls. Fella was there holding another leg. Steven Webb was there standing near her leg. Clifton Yarborough arguing about money with Snotrag. They were all there, witnessed it all, participated in it all.

And they all left, leaving Catherine Fuller to die [74] in that dirty, vacant garage. Some of them went to the park. Some of them went home.

THE COURT: Excuse me. Is this a reasonable time to take a break? The jury has been sitting a little over an hour.

MR. GOREN: Can I have ten more minutes? That would be better for me.

Some of them left to go to the park. Some of them left to go to the arcade. Some of them left to go home. Some of them left to go to their girlfriend's houses. And while they were doing that, Catherine Fuller died in that garage.

At about 5:30, Dr. Bray estimated, she was dead, 45 minutes after this happened. She could have been dead as early at 5 o'clock. She could have been dead as early at 4:30, he said. He can't be sure.

But we know she died before six when her body was discovered by William Freeman who went back to that garage to go to the bathroom. At 6:07 the police received a call from a young woman who was with Mr. Freeman. At 6:18 the police arrived on the scene, the first officer was Stephanie Ball. About 6:30 Detective McGinnis and Detective Sanchez from homicide arrived. At 7:30 Dr. Bray arrived and pronounced Catherine Fuller dead.

He did an autopsy. You heard about it. You saw [75] him illustrate what he found on several diagrams. And then he found out that she was beaten in a way that clearly shows she was hit a number of times all about the body, thirteen different injuries I think he said below the head, that she had bruises and injuries all about the head, both of her eyes, major areas of injury here, along the side of the facts on both sides; and the he confirmed that just what all of the witnesses who told you about what Levy Rouse did while she was on her back in that garage, that there was some pipe-like object inserted eleven inches into her rectum.

Totally consistent with everything that you heard testimony about.

If the Court wants to take a break, Your Honor, this would be fine.

THE COURT: I think it's a reasonable time. Ladies and gentlemen, please do not discuss the argument thus far amongst yourselves. Keep an open mind. See you back here in about fifteen minutes.

(Whereupon, a brief recess was taken.)

THE COURT: Are you ready, Mr. Goren?

MR. GOREN: Yes, Your Honor.

THE COURT: Call the jury, please.

(Whereupon, the jurors entered the courtroom.)

THE COURT: All right. Let the record reflect [76] all defendants, defense counsel, ladies and gentlemen of the jury and the alternates are present. Government counsel is present.

MR GOREN: Ladies and gentlemen, you are going to be instructed at some point that some of the evidence against – that has been presented at this trial is evidence that you are only to consider against one defendant, individual defendant. Things like the statements that Kaye Porter testified she overheard Snotrag, Mr. Catlett make; evidence only to be considered in determining Mr. Catlett's guilt.

Statements that Detective Villars overheard that Mr. Christopher Turner and Mr. Overton, Bo-Bo and Crissie, say; evidence only to be considered in considering their guilt.

Maurice Thomas' overhearing Timothy Catlett, Snotrag, telling someone by the name of Charles – we didn't know anything further, didn't know where he lives or where he was – they had to kill the lady, she recognized someone.

The statements that Trina Ward testified to you she heard from Levy Rouse, admitting that he was there and telling her, after she had called him a nasty dog, that he had one worst things, he did the worst thing to that lady in the alley. The evidence on his pants, those [77] things, evidence to be used only in considering Mr. Rouse's guilt.

And you saw Clifton Yarborough's videotaped statement in which he admitted his presence that day in that alley and described to you some of the things he did; evidence to be considered only in considering the guilt of Clifton Yarborough.

There is a great deal of other evidence that you should consider as a whole in deciding what happened that day. You have to take a hard look at it, examine it in terms of how it fits together, how it supports itself and each other, how it's corroborated.

And, in doing so, you have been instructed already once and you will be instructed again, that there are a number of defendants and there are a number of counts; ten people, four individual counts, four individual charges applied to each one of them, and that you must consider the evidence independently as to the guilt of each one of the defendants on each one of the counts, considering only that defendant's conduct and the evidence which applies to it.

And you will have to go back and sift through the evidence, the testimony that you just heard, and remember what was the evidence against each one of these people, what was it that they were said to have done. Timothy Catlett, five witnesses testified about Timothy Catlett's activities [78] that day.

Melvin Montgomery, seeing him in the park and singing that song, the same song that Calvin Alston

said he sang. Harry Bennett, Derrick, Calvin Alston, Carrie Eleby and Maurice Thomas all identifying Snotrag, Timothy Catlett, as being in the alley and participating in the beating, and both Mr. Alston and Mr. Bennett saying that it was Timothy Catlett who had this change purse.

Five people who told you what Timothy Catlett did that day, as well as the statements that Maurice Thomas said he overheard Mr. Catlett making minutes after this kidnapping, robbery and murder had occurred, a half a block from there, in which he said, "We had to kill the lady. She recognized someone." And the admission he made to Kaye Porter in which he said, "I just kicked the lady."

Now, Mr. Harris, Monk, said he was with James Henry that day. And you will have to consider he admitted first of all that he was in that neighborbood, that he was in and passed through that park thirty minutes, wasn't it, before Ms. Fuller was attacked and killed. And you will have to consider weren't all of the witnesses who confirmed his alibi contradicted by each other, by some of their past statements; that they were all, weren't they, uncertain about the most important part of his alibi, and that this that at the time, and what it all boils down to is Mr. Harris [79] saying, "I was with James Henry at the important time," James Henry who was one of his best friends who he saw a lot, who said different things at different times about the same matters, who contradicted what some of the other witnesses for Mr. Harris said, and who demonstrated his truthfulness by his comments and his testimony about his girlfriend, Ida Lock; that testimony contracted by every other witness about when he was there, how many times he was there, what he was there for and what he did.

Harry Bennett, Calvin Alston, both saw Alphonzo Harris at that park that day. Both testified that he was present when the robbery was discussed. Both testified that at that place, having some in the 9th Street side, at that place in the alley, the cut, it was – that's where Alphonzo Harris, down at this part of the alley, hit and kicked Ms. Fuller.

Both testified that he was in the garage, and testified that it was Alphonzo Harris who said, "Shove it in more," at that time this pipe was being inserted in Ms. Fuller's rectum.

Mr. Overton says he was home – his alibi witnesses say he was home drunk in bed. And you heard some testimony from Edna Adams, his grandmother, who, didn't she say, wasn't sure about the day, wasn't sure about the sun, wasn't sure about very many of the details and had to be made to [80] remember. Lottie had to make me remember that day."

One of the important things that Lottie had to make Ms. Adams remember is why he was there, because Ms. Adams testified, didn't she, that she didn't even remember Lottie being there? But now she did, and now she remembered it was October 1st, and now she remembered it was rainy and not sunny. And she remembered all that because Lottie made her remember. Lottie, Mary Phyllis Overton, Mr. Overton's sister, who admitted that she had to tell her grandmother everything because she had to make her remember.

Carrie Eleby, Harry Bennett, Calvin Alston, Melvin Montgomery, all saw Russell Overton that day. They saw him in the park. They saw him participating and heard him participating in that conversation. They saw him leave the park and go into the alley. They

saw him participate, several of them, kicking Ms. Fuller at the cut.

And, all of them said that it was Russell Overton who dragged the lady into the garage and who stood there and held her legs while Levy Rouse inserted the pipe into her rectum.

Mr. Rouse was with Christopher Taylor; 16 years old. Why don't you go back in the jury room and just try to count how many times Christopher Taylor changed his story about what he did that day with Mr. Rouse, contradicted by a whole host of prior statements at which he admitted on [81] at least three occasions, two police officers, that he was there in the park, Christopher Taylor, that he saw what happened that he witnessed Ms. Fuller being robbed and killed.

Mr. Rouse mimicked, didn't he, Mr. Taylor's testimony about what they did that day. And didn't he demonstrate to you that he would change the story from one minute to the next, saying one thing and two minutes later saying something entirely different?

Six people – excluding Trina Ward, six people saw Levy Rouse in that day in the park. Five of them saw him in the alley. Mr. Bennett, Mr. Alston, Carrie Eleby, Linda Jacobs and Maurice Thomas. The four who saw who put the pipe in Ms. Fuller all say it was Levy Rouse. They all saw him participate in the beating of Ms. Fuller.

And then there is the evidence of Trina Ward hearing statements from Mr. Rouse about what he did that day; that he was there, that he did the worst thing to that lady in the alley. Levy Rouse, who, that night, was seen by Trina Ward with blood on his pants, on the inside of his pants. And while he was leaning

down with that pipe, must have gotten blood all over him. Not from a bloody nose, no blood anywhere else.

Felicia Ruffin, who was known by Harry Bennett, well. Didn't he testify that she was good friends with [82] his friend who lived right next door right down the street, Nicole, who he knew very well, who he saw in the park back away from the group a little bit, who he saw in the garage, saw her picking up things, saw her receive that ring?

I think the question, though, that you have to ask yourself about Mr. Bennett is, knowing her – well, he couldn't be mistaken – why would he say that she was there if she wasn't? What reason in the evidence is there for him to lie about Ms. Ruffin?

Kelvin Smith, Hollywood, and Christopher Turner, Crissie, were both in the same place that day over at Kelvin Smith's house. All of the people who testified about that were family members of – or good friends of the two of them, all close relations.

They were home all day in spite of the fact that you heard from several witnesses that they saw Kelvin Smith and Christopher Turner at the alley when the police were there. George Raspberry saw him. Vincent Gardner saw at least one of them.

Think about the witnesses that testified they were there that day and think about the confusion amongst who was present, what time, various things happened. Think about Mr. Smith's testimony, Mr. Turner's testimony.

Most importantly, think about how on the day of the murder they got phone calls telling them about the murder, [83] one of them from Rene Walker that came before the police ever discovered the body. Didn't they

testify that when mom came home from work, when Denise Riddick arrived, before Grandma went downstairs, the phone call had come in and they were told? That was 6 o'clock, 6:30. Before the police discovered the body, Rene Walker called and told them that she heard about a little girl being killed.

And the two phone calls that Mr. Smith and Mr. Turner received, one from Vincent Gardner, who denied he ever called them, the other from Rene Walker, who said at the time she called them, having denied she called them in the Grand Jury – the time she called them she was involved with Jerome Diggs, her boyfriend, Beanie. When did that happen?

Now she wasn't sure, but back then she said November 16th. Sometime in November she made this phone call.

Kelvin Smith was seen by Harry Bennett, Calvin Alston, the young woman, Carrie Eleby, who had his baby; Linda Jacobs, and Maurice Thomas who, in deference to Ms. VanSusteren, said he saw a number of people –

MS. VAN SUSTEREN: Object to that, Your Honor.

MR. GOREN: – who he recognized and he thought it was Kelvin. He thought it was Crissie. People that he knew very well.

MS. VAN SUSTEREN: Your Honor, I ask that the [84] record be stricken.

THE COURT: What?

MS. VAN SUSTEREN: The deference to Ms. VanSusteren.

THE COURT: He was paying respect to your objection that you made a moment ago.

MS. VAN SUSTEREN: He should be arguing the evidence, not making comments.

MR. GOREN: Harry Bennett, Calvin Alston, saw Mr. Smith in the alley in the park, saw him participate in the beating, kicking and hitting Ms. Fuller. One of them saw him at the first part of the alley, Mr. Alston, actually participating. The other said, "He was there, but I didn't see him do anything."

Mr. Bennett, Mr. Alston, Ms. Eleby, Mr. Thomas, all saw Mr. Smith participating in the beating at the cut. Several of them saw him inside the garage. Others didn't and didn't see who everybody was in the garage. Mr. Bennett saw him. Ms. Eleby saw him. Ms. Jacobs saw him.

And Mr. Turner, also by the same people, Mr. Bennett, Mr. Alston, Eleby –

MR. ELSTEN: Can we have which Mr. Turner you're talking about?

THE COURT: Will you, please?

MR. GOREN: Christopher Turner.

And by Mr. Thomas, five people who saw each of [85] them in that alley, in the park, who described to you what each of them did.

Mr. Turner who, when he was arrested, was very interested in how the police knew we were in the alley. He talked, had a discussion with Mr. Overton, with Detective Villars listening. "The police don't go nothing. We didn't touch the body."

Mr. Charles Turner. Well, you have a choice with Mr. Charles Turner; don't you? He was either home with his mother and his brother, Carlos, and his sister,

Charlene, as Ms. Alston, his mother, and Carlos testified.

Or you can choose to believe Mr. Turner himself –

MR. ELSTEN: Objection, You Honor. Carlos did not testify he was in the home.

THE COURT: Ladies and gentlemen, it is your recollection of the evidence which controls. It is not Mr. Goren's recollection nor Mr. Elsten's recollection.

MR. GOREN: You can choose to believe that Mr. Turner was at Charlene's house, as you heard testimony, or you can choose to believe Mr. Turner himself, who said he wasn't at his sister's house but he was home all alone that day.

What did he do? "I don't recall." The only thing he does recall is Vincent Gardner coming over to get him [86] and Levy Rouse coming over to get him. Both contradicted that. And in that regard there was some testimony from different witnesses for one defendant that relate to the defenses of another defendant.

You shouldn't pay attention to the conflicts at all, one might be right, the other might be right. Look at the evidence against them directly. Look at the witnesses who say where they were. That's the basis for deciding the guilt of each of these people.

Charles Turner, who was seen in the park all day long by Melvin Montgomery. Seen crossing with Levy Rouse, just the way that Calvin Alston described. Mr. Bennett, Mr. Alston, Mr. Thomas – Maurice Thomas, all saw Fella, all saw Charles Turner in that alley, beating Ms. Fuller, kicking Ms. Fuller, hitting Ms. Fuller.

And Alston says that he was one of the people, Mr. Charles Turner, who held Ms. Fuller's legs while Levy Rouse inserted the pole.

Mr. Webb, who was seen by Mr. Alston, Mr. Bennett, and Ms. Eleby, who didn't know his name at the time, called him the red boy, who did in fact identify him at the time she testified in the Grand Jury by photograph, seen in the park, seen in the alley at the cut, struggling with, hitting and kicking Catherine Fuller by all three of them.

And finally Clifton Yarborough. Mr. Robinson, you [87] may recall in his opening statement, stated to you that Mr. Yarborough was going to present evidence that he was at his girlfriend, Tandra Hill's house, doing homework at the time of the murder.

You heard from Tandra hill, and you didn't hear any testimony about Clifton Yarborough being at Tandra Hill's house on October 1, 1984. All you heard from the witnesses who testified about Clifton Yarborough is that Maurice Thomas didn't like him.

Mr. Robinson promised you that evidence and didn't deliver it. I promised you that you would hear testimony about what Clifton Yarborough did that day. And didn't you hear that he was in the park from Mr. Montgomery, Mr. Bennett, Mr. Alston? That Mr. Bennett and Mr. Alston and Carry Eleby, as well as Maurice Thomas, saw Clifton Yarborough in the alley?

MR. ROBINSON: Objection, Your Honor. There is no evidence that Mr. Bennett ever identified Mr. Yarborough.

MR. GOREN: I'm sorry, that is absolutely correct. Mr. Bennett saw Mr. Yarborough in the park. Mr. Alston, Ms. Eleby, and Mr. Thomas saw him in the

alley. That Mr. Alston and Mr. Thomas saw him participating in the beating. That he was in the garage struggling with Mr. Catlett over this change purse.

And finally, as evidence against Clifton Yarborough [88] alone, his own statement that you saw on videotape, in which he admitted he was there, and interestingly enough talked about, didn't he, about money and how he held money?

Five witnesses, including himself, or in addition to himself.

Now, ladies and gentlemen, you are going to hear from each of the lawyers that represent each of these defendants. And what I expect – one of the things I expect you will hear is, "Don't believe Harry Bennett. Don't believe Calvin. Alston. The made deals. They can't be believed. They can't be trusted. They admitted they lied when they gave their statements. They admitted they are murderers. Don't believe them."

Well, the decision as to whether to believe them or not, it's not mine and it's not theirs. It's yours. You will hear from Judge Scott that an accomplice – that's what they are, accomplices, they participated in that beating, they told you that – is a competent witness, is a witness that can be called to testify like any other witness.

And you have a right to consider the reasons they're testifying as you do with any witness. And you have a right to consider, and you should consider what they are trying to do when they made these plea bargains, these agreements with the United States.

[89] But be assured that if you believe an accomplice, you may convict a defendant for a crime based on that accomplice's testimony alone. There doesn't need to be any corroboration if you believe it.

And one of the things that you should – that I stress to you and that you should think of as being very important as a factor is deciding the extent to which to believe Derrick, Harry Bennett, or Calvin Alston, is the fact that this is not uncorroborated testimony of an accomplice, but corroborated by many, many pieces of evidence, many other witnesses.

Not only do they corroborate each other, not in every detail but substantially. But they're corroborated by the physical evidence, what was found on the scene. They are corroborated by the medical examiner who testified about the kind of beating this was, what must have been entailed in it, the kind of force and the number of blows that were necessary to shatter four ribs puncturing the lung, to shatter Ms. Fuller's liver, the kind of injury that the doctor said he usually sees in car crashes or people who fall from buildings, the number of bruises about her head, all corroborate what happened that day and what they say.

And they are corroborated by Carrie Eleby, Linda Jacobs, Maurice Thomas, people who are totally [90] unrelated to each other.

And at least in terms of some individual defendant's when you consider each defendant individually, the statements that Maurice Thomas and Kay Porter heard, corroborate their testimony as to Mr. Catlett. What Detective Villars heard corroborates some of the testimony as to Mr. Overton and Mr. Christopher Turner.

What Ms. Ward told you about the things that Levy Rouse said, about the blood on his pants, about his admissions about doing the worst thing to that lady corroborate their testimony about what Mr. Rouse did.

And Mr. Yarborough's statement itself corroborates their testimony as to what Mr. Yarborough said.

And ladies and gentlemen, finally, after considering all of that evidence, after trying to put yourself back in the place of those witnesses, thinking about what happened, what they said, the believable evidence, I submit to you that there is only one conclusion that you can reach, and that is that Timothy Catlett is guilty of armed robbery, kidnapping, two counts of felony murder.

That Alphonzo Harris is guilty of kidnapping, armed robbery, felony murder, two counts. That Russell Overton, Bo-Bo, is guilty of armed robbery, kidnapping, and two counts of felony murder. That Levy Rouse is guilty of armed robbery, kidnapping, and two counts of felony murder. [91] That Lisa Ruffin is guilty as an aider and abetter clearly, of armed robbery, kidnapping, and two counts of felony murder. That Kelvin Smith is guilty of armed robbery, kidnapping, and two counts of felony murder. That Charles Turner, Feila, is guilty of armed robbery, kidnapping, and two counts of felony murder. That Christopher Turner is guilty of armed robbery, kidnapping, and two counts of felony murder. That Steven Webb is guilty of armed robbery, kidnapping, and two counts of felony murder. And that Clifton Yarborough is guilty of armed robbery, kidnapping, and two counts of felony murder.

Thank you.

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[198] SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CRIMINAL DIVISION

F-8617-84

UNITED STATES OF AMERICA

vs.

TIMOTHY CATLETT,

Defendant

F-6914-84

UNITED STATES OF AMERICA

vs.

ALPHONZO L. HARRIS,

Defendant

F-8613-84

UNITED STATES OF AMERICA

vs.

RUSSELL L. OVERTON,

Defendant

F-8614-85

UNITED STATES OF AMERICA

vs.

LEVY ROUSE,

Defendant

F-5125-85

UNITED STATES OF AMERICA

vs.

FELICIA A. RUFFIN,

Defendant

F-8616-84

UNITED STATES OF AMERICA

vs.

KELVIN D. SMITH,

Defendant

F-8513-84

UNITED STATES OF AMERICA

vs.

CHARLES S. TURNER,

Defendant

Washington, D.C.
Thursday, December 5, 1985

Carolyn Sargent-Burns, CP, RPR, CSR
Official Court Reporter Telephone: 879-1036

* * *

[234] CLOSING ARGUMENT ON BEHALF OF DEFENDANT ROUSE

MS. McEWEN: May it please the Court. Ladies and gentlemen, on behalf of Levy Rouse, I stand before you at the point in the trial that is the most important for him, at the point in the trial that really is the reason why he is here, at the point in the trial where you perform the most important function in our criminal justice system that a group of people can perform; the function of determining the guilt or innocence of a fellow human being charged with serious offenses.

* * *

[243] Maurice Thomas didn't see anything in that alley; did he? His version of what happened conflicts with the version of Calvin Alston and the version of Harry Bennett. Ladies and gentlemen, we have three versions of what happened before Ms. Fuller even got to the point where she was in front of the garage.

What is the significance of that? The significance of three different versions of something that should have been remembered is that Maurice Thomas saw nothing. Harry Bennett did something to Ms. Fuller that he doesn't want us to know, like maybe hit her over the head with that board himself, which he doesn't attribute to anybody else. And, Calvin Alston was intimately involved, not just in what happened in

the garage, but also what happened in the very beginning of that alley.

Calvin Alston, himself, gave the version of that [244] abduction from the street that was corroborated by the medical testimony. Dr. Bray testified that there was an area on Ms. Fuller's face where there was a pattern that was consistent with her being struck by a weapon that may have been a piece of wood and, also, that same piece of wood might have been what caused those massive head injuries from which Ms. Fuller might have died, alone.

Calvin Alston knew what happened to Ms. Fuller as soon as she got into that alley, because it was Calvin Alston that hit her with that stick, and not my client, as he testified.

The medical testimony corroborates this theory. Dr. Bray testified that he could have no opinion as to whether a certain number of people caused those thirteen injuries from which Ms. Fuller died. He couldn't say that there were eight people who killed her, thirteen people who killed her, five.

As far as the testimony of. Dr. Bray is concerned, Ms. Fuller could have been killed, could have been beaten, could have been kicked, could have been struck with a board by only one person, one individual, ladies and gentleman; the illusion of a gang killing, a group effort.

It doesn't even make any sense. You don't leave your common sense at home, ladies and gentlemen, when you become jurors. Why would ten to thirteen people say, "Let's [245] participate in a robbery on a public street before dark," and then go over in a group and do it? That doesn't make any sense at all; does it? Because that means less money for each one of them, as far as

the proceeds of the robbery is concerned. And, secondly, it means there is more of a likelihood that they will get caught, that they will be convicted, that they will be discovered.

Isn't it much more likely that that robbery was actually not just the idea but also the act of a small number of men? How did Ms. Fuller get into the garage? Calvin Alston came up with different names at different times as far as how it was that Ms. Fuller got into that garage; didn't he?

Where did he get those names from? He was asked, "Why is it that now on the witness stand here in this trial, you are saying these two names as far as who transported Ms. Fuller into the garage and down that alley, and then in the Grand Jury – well, when you talked to the police, you had another set of names?"

What was it that Calvin Alston said to that? He said, "I just took the names out of the air, the first names that came to my mind."

He was asked, "Where did you get the names Levy and Monk from? Why did you say that?" He said, "Levy and Monk had put my name into it. I wanted to get the weight off [246] of me and onto somebody else. I wanted to put the weight onto my co-defendants."

Why did he want to do that? He answered that question himself on the witness stand. "Because the police, when I was arrested – and I didn't even know that I was under arrest, I thought I was just going down to get questioned, I didn't even know that I was under arrest. They came to my house, took me over to homicide, started asking me questions about what happened. Told me they didn't believe me when I told them I didn't know anything.

"And then they drew a pie and told me, 'This is it. This slice of pie right here, this slice is you. And then, well, the rest of this pie, that's the other people. That's the co-defendants. That's, the others.'"

What does that mean to Calvin Alston? He said that to him that meant that he could take all the weight himself, or he could give it to others. Well, presented with that kind of a choice, what is it that he's got to do? Of course he's going to say, "I did very little, and I saw all these other people doing these horrible things." That's what he did.

He did it for such a long time and in such – what he thought was such a great way that he was surprised when they took him downstairs and he saw those bars. You remember I asked him, "When was it that you realized you [247] you weren't going home?" He said, "When I saw those bars downstairs." I asked him, "Well, did you think that what it was that you told to the police before they took you downstairs – did you think that what you said to them would have had you going home that day?" He said, "Yes."

Ladies and gentlemen, he thought that he was taking the weight off of himself and putting it on somebody else. And that's what he still thinks; isn't it? That's what he still thinks; isn't it? Because he did not say, "I was the one who did this to that woman." He didn't testify to that. He didn't say, "I was the one with the pole."

He didn't say, "The very violent and evil thing that I did, the terrible thing that I did was this to that woman." He said something totally different as to his own activities; didn't he? A reason not to tell the truth.

Get the weight off himself. A deal with the Government as far as his own sentencing is concerned. A deal with his image as far as what kind of person he is.

He says, "I'm a man." And he was asked, "Were you a man when you were kicking and punching Ms. Fuller?" His answer was, "Yes, I was a man. I did something foolish." He was asked, "Foolish?" And he said, "I did a very violent and evil thing."

He himself testified that he expects to be punished because of what he did. But what does he also expect? He [248] also expects to erect an illustion that would serve the purpose of him not being punished as much as he should be, and the illusion is that somebody else did the most horrible thing to Ms. Fuller in that alley.

How is it that Calvin Alston has insured, as far as he's concerned, that his illusion will be believed? Carrie Eleby and Linda Jacobs, the two witnesses who testified, "I spent the night at Calvin Alston's house before he was arrested." Calvin Alston was arrested on November 29, 1984; wasn't he?

Carrie Eleby and Linda Jacobs both testified that they went over to his house. Carrie Eleby had a conversation with Calvin Alston about the murder, she told the police; didn't she? This was about two weeks before Calvin Alston was arrested.

Linda Jacobs, Smurfette, said, "I was in the car on that night when we were coming back from Cherry's, the go-go, at around two or three in the morning. Calvin Alston, yes, was in that car. We were there in his house all night."

Wasn't that when Calvin Alston seized the opportunity to assist in the erection of this illusion that he was not the one who did the worst thing in that alley;

so, therefore, he should not be punished as badly, as, horribly as he should be?

[249] Carrie Eleby's version of what happened in that alley, I submit to you, is Calvin Alston's version. She went to the alley, she says, but she didn't say that to the police initially; did she?

"I went to the alley and I don't remember seeing Calvin Alston there at all." Same thing Smurfette says. Where was Calvin Alston when Carrie Eleby and Linda Jacobs were in the alley? Calvin Alston says, "I was there." Carrie Eleby and Linda Jacobs say, "No, we didn't see him."

Carrie Eleby says that the reason that she went into the alley was because she heard a scream. When she got to the alley, she did not go into the garage, ever, at all. She stayed by the fence. What she saw was not Ms. Fuller being struck with a board or a stick; not Ms. Fuller being padded down and then hit. She saw somebody that she didn't even know was a female. She just guessed it was a female because of the rollers that were on the ground.

What was it that Carrie Eleby remembered as the only thing that she did see? The only person that, with any kind of sure testimony that she did see in that garage with the pole was Levy Rouse, my client. But, ladies and gentlemen, this same witness testified that she went straight from that alley where that fence was, that she left Levy Rouse in the garage, not standing up. He wasn't standing up. There was a group of people around. She left Levy Rouse. [250] He had the pole in his hand.

She immediately walked to the bus stop. "Did you take a detour?" "No." "Did you go anywhere else between the time that you were in the alley to the time

you got to the bus stop?" "No." "Did you run to the bus stop?" "No.'

Who does she see when she gets to the bus stop? Who is at the bus stop before Carrie Eleby even gets there? Levy Rouse, she says. She testified. "Was he breathing hard?" "No." "Was he perspiring?" "No." "Was he looking nervous, upset?" "No." "Anything unusual about him?" "No."

"What was he doing at the bus stop?" "Well, he was talking to somebody when we got to the bus stop." "Well, had he just started talking to that person?" "No. When I came upon him, when I got to the bus stop, he was already engaged in conversation with somebody."

"What were they talking about?" "Um, nothing unusual. Levy Rouse was talking about taking a trip out of town. He was talking about getting a [illegible]." A normal conversation; wasn't it?

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[192] SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CRIMINAL DIVISION

F-8617-84

UNITED STATES OF AMERICA

vs.

TIMOTHY CATLETT,

Defendant

F-6914-84

UNITED STATES OF AMERICA

vs.

ALPHONZO L. HARRIS,

Defendant

F-8613-84

UNITED STATES OF AMERICA

vs.

RUSSELL L. OVERTON,

Defendant

F-8614-85

UNITED STATES OF AMERICA

vs.

LEVY ROUSE,

Defendant

F-5125-85

UNITED STATES OF AMERICA

vs.

FELICIA A. RUFFIN,

Defendant

F-8616084

UNITED STATES OF AMERICA

vs.

KELVIN D. SMITH,

Defendant

F-8513-84

UNITED STATES OF AMERICA

vs.

CHARLES S. TURNER,

Defendant

Washington, D.C.
Friday, December 6, 1985

Carolyn Sargent-Burns, CP, RPR, CSR
Official Court Reporter Telephone: 879-1036

* * *

[425] REBUTTAL CLOSING ARGUMENT
ON BEHALF OF THE GOVERNMENT

MR. GOREN: May it please the Court. Ladies and gentlemen of the jury, as you have probably seen, I have been sitting over here writing furiously on several note pad writing down some of the arguments of counsel so I could address you again. I promise not to take too much time. You have to leave at five, so that is about three hours. I won't go on that long.

You have seen for the past twenty some odd days the most important testimony, the most important evidence, the evidence. And it is really that that will guide you when you go back into the jury room when making a decision in this case.

For the past three days you have heard the lawyers discuss, argue this case, discuss and argue the evidence to try and give you some guidance on how to view it, how to judge it, and how to decide who is telling the truth, how to decide what happened over a year ago on October 1, 1984.

And as you have heard some of the objections about people expressing – lawyers expressing their own personal opinion, our opinions don't count. It's yours that

counts, your judgment that counts. That counts very heavily now.

[426] They are important not only for the Government but for the ten men and – nine men and one woman who sit before you.

The police in this case did intensively investigate. The investigation began at 6:18 in the evening on October 1st. It involved a number of police officers who arrived on the scene. It involved an intensive look at this garage, sifting through every piece of trash, everything that could conceivably be thought of as a weapon, attempting to identify anything, anything that would assist them in bringing the individuals who killed Catherine Fuller here to this courtroom so that you could make a judgment.

And they were unsuccessful. They talked to hundreds of people. There were a number of police officers who spent most of their time attempting to solve what was then the mystery of the death of Catherine Fuller. They were careful. They were as thorough as they could be with the knowledge they had. They weren't perfect. Who is? What investigation would be? You would probably not believe it if anybody argued that it was perfect.

And it's true, there was no physical evidence to link, anybody to Ms. Fuller's death. There was no fingerprints found that could be used to identify who had killed Catherine Fuller. And you've heard all the reasons [427] for that. You've heard how it was wet, how it was dirty, how it's impossible to take fingerprints off of those kinds of surfaces.

You've heard how, unlike what one of the lawyers, believe, suggested was the evidence, one of the officers looked at this entire door in this area attempting to get

fingerprints and found one somewhere up here that was not sufficiently preserved so that any identification could be made.

You heard some discussion and some questions about whether fingerprints were attempted to be taken off the sweater and the umbrella. You heard the officers and the fingerprint examiner testify that nobody can do that, the suggestion being, perhaps, "Well, if the police had looked harder, they could have solved this crime."

The police looked as hard or as careful as they could be. They went so far as to attempt to get fingerprints off of Ms. Fuller's body, a technique that is experimental and has never been successful.

You have heard discussion about how there were a couple of hairs that weren't Ms. Fuller's found on some of her clothing, and how none of those hairs were these defendants. Well, as you heard when that stipulation was read in, Calvin Alston's hairs were also submitted, and none of those hairs were his hairs. But he admitted [428] that he helped kill and rob and kidnap Catherine Fuller.

The hairs prove nothing. It's a smokescreen. It's an attempt to get you to look at things that are not important in this case, to divert your attention from the real believable evidence in this case.

No, there was no blood evidence. There was no property discovered. There were no footprints. Look, look at the garage floor and how dirty it is. Do you see any footprints? Do you see where anybody could leave a footprint?

All sorts of questions about plaster casting and all sorts of other things. This isn't Perry Mason. This is

real life. A smokescreen, an attempt to divert your attention from the real issues here.

Mr. Elsten suggested to you that the fact that there was no physical evidence affected Mr. Goren's job, he said, affected the investigation, put pressure on the police to do something to find the perpetrators.

They talked to hundreds of people. Nobody came forward. So, they had to do something. What's the suggestion? What is it that Mr. Elsten was attempting to suggest to you that happened in this case?

You will notice that some of the arguments of counsel suggest reasons why you should believe some of the witnesses who testified in the Government's case. And I say [429] that very, very cautiously. The witnesses who testified in the Government's case, not the Government's witnesses, but the witnesses who testified in the Government's case, the people who testified in that case were people just like the people who committed this murder.

They were their friends. They were their girlfriends. They were their neighbors. They lived in the same community. And they weren't any different in many ways. They weren't the Government's witnesses. They were the witnesses who saw what happened that day.

Some of them, defense counsel argued, are believable. They're the good witnesses. Some of them shouldn't be believed. Well, you think over the ten arguments you've heard and try and decide who the believable witnesses are and who the ones who aren't believable are.

"The believable witnesses are the witnesses who didn't say my client was there. The unbelievable witnesses are the witnesses who say my client was there."

It's not the manner in which they testified or how they acted. It's whether they identified Timothy Catlett or Alphonzo Harris or Levy Rouse or any of the other defendants as to whether they should be believed or not.

You heard some people argue, "Melvin Montgomery is most believable. He didn't see my client out there." And you've heard, "Melvin Montgomery is confused and wrong [430] about days. He's out there every day. He identified my client. He's wrong."

You heard that about Carrie Eleby and Mr. Thomas, Maurice Thomas. You even heard from one of the lawyers that Calvin Alston should be believed because he said something that was helpful to his client. Believe the people who help me. Don't believe the people who hurt me. That's totally wrong.

MR. ELSTEN: Your Honor, may we approach the bench? We have an objection that should not be stated in front of the jury.

THE COURT: Come to the bench.

(Whereupon, counsel approached the bench and conferred with the Court, as follows:)

THE COURT: What?

MR. ELSTEN: We have frequently moved for grounds for severance. My client could not get a separate trial. If Mr. Goren is allowed in closing to say one lawyer said one witness was good and another lawyer said another witness is good, they are in conflict if he's going to argue, because the way the different lawyers handle themselves, some saying a Government witness was good and some saying that it was bad, that my client is one of a group of incredible lawyers, lawyers that should not be believed –

THE COURT: He didn't say the lawyers shouldn't be [431] believed. He didn't make any statement whatsoever.

MR. ELSTON: I defer to Ms. Roberts who may be able to impart the legal objection somewhat better.

MS. ROBERTS: My objections is this, is rebuttal. If Mr. Goren is going to rebut individual arguments of counsel, he should do that and go down the line. I certainly object to his suggestion that the lawyers, even though he is not specifying which lawyers he is referring to, the lawyers – I represent Mr. Harris. If he wants to rebut what Mr. Harris said in closing argument, let him do that. I think it is inappropriate in a case where we are all telling the jury we have separate trials going on here. Mr. Goren should argue what the lawyers did.

It sounds like it is some concert or agreement what the lawyers would be. Let's rebut the cases down the line and get out of here. That's the appropriate way to do it.

MR. GOREN: First of all, these arguments are building up to arguments of credibility of witnesses, not credibility of millions of defenses. We will be here for days if I don't combine some of the arguments.

Some of the arguments were the same about Mr. Alston. I will be careful not to suggest the cases should be judged in any way other than independent – independently of one another.

[432] THE COURT: Please do.

MS. McEWEN: If we could not an objection, Your Honor. Your Honor, Mr. Goren –

THE COURT: What?

MS. McEWEN: Mr. Goren, in his argument, made a statement, "You have seen the most important evidence." Then after that he said, "You have seen the evidence." I object to that kind of inference to the jury that there is other evidence in this case that they have not seen.

And there is one other point that –

THE COURT: I didn't draw any inference like that.

MR. GOREN: I didn't intend it.

MS. McEWEN: I would object to any further kind of commentary in reference to any other evidence that the jury has not seen.

THE COURT: He hasn't mentioned anything about any other evidence.

MS. McEWEN: He said, "You have seen the most important evidence."

THE COURT: He has shown what the people have seen, the evidence, which is the most important thing.

MR. GOREN: I think what I was trying to do is just a motion to argument.

MS. McEWEN: There is one other matter. That is, in Mr. Goren's closing argument, as opposed to rebuttal, [433] he made a statement that six witnesses have identified my client. Only five have identified him, and I believe –

THE COURT: Well, you pointed that out, I presume.

MS. McEWEN: I believe he may have been referring to the videotape of Clifton Yarborough.

THE COURT: No, ma'am.

MR. GOREN: I was referring to Montgomery, I believe, as the sixth.

THE COURT: You had a chance to address that.

MS. McEWEN: I would object to any reference at all, any inference that my client was identified in a videotape of Clifton Yarborough.

THE COURT: I don't think he is going to do that.

MS. McEWEN: Thank you.

(Whereupon, the proceedings had at the bench were concluded; counsel returned to their seats at counsel table, and the trial was resumed, as follows:)

THE COURT: Continue, Mr. Goren.

MR. GOREN: As you have been told many times, this is really in some ways ten separate trials.

MS. ROBERTS: Objection. It's in every way ten separate trials.

MR. GOREN: It is ten separate trials in the sense that you have to make a judgment about each of these [434] defendants independent of the others. And a decision about the charges against each of these defendants is separate from each of the others.

But it's not separate in some ways. Let me explain to you what I mean by that. It's the same testimony, the same witnesses that you have heard from from which you have to make these independent judgments. You know that because each of the lawyers, in arguing their own individual case, has said quite clearly that Harry Bennett and Calvin Alston and some of the other witnesses are not to be believed.

A lot of the arguments that you have heard are the same kinds of arguments attacking what is called credibility, the believability of some of those witnesses.

And the credibility of those witnesses should be discussed separately and you should think about that. I'll do that with you, too.

Ms. McEwen said, "You have to decide this case, what happened and what didn't happen; who was truthful and who was not truthful." She certainly is right. You do, and you will.

But you can't view each of the witnesses independent of each of the other witnesses, because, in fact, when you look at their testimony as a whole about the events, the events that they described, the kidnapping, [435] robbery and murder of Catherine Fuller, you see that they are not independent; that they corroborate each other in substantial ways; that the events that they are describing is the same events and are real events.

One thing that won't help you in deciding who to believe and deciding the credibility of witnesses is basing your judgment on names and name-calling. Dope dealers, dealmakers, perjurers, human garbage, street criminals, liars.

If you want to decide what kind of witnesses these are, you can do that. You have heard Calvin Alston and Harry Bennett called murderers, killers. Ms. VanSusteren, said the killers said this and the killers said that; the murderers. That's right. That's right. And anybody who participated in that crime is a murderer and a killer.

Any name that they were recalled about what they did that day applies to anybody who participated in

that act. So if they are killers and murderers, then remember them as such. But they admitted they killed.

You will be given an instruction on some of the factors that you can consider in deciding who to believe. You will be told that you have – you could look at the demeanor and the manner in which somebody testified on the witness stand, and you should because it's important. It tells you a lot; doesn't it?

[436] Whether they impressed you as a truthful person, whether they seemed to have an accurate memory about what happened, whether they had a motive for telling the truth or not telling the truth, whether they were biased in any way for the Government or toward other parties, toward other witnesses or toward the defendants or any one of the defendants.

You could look at, you will be told, the reasonableness or unreasonableness of what it is that people testified to, the stories that they told you, the versions of various events that they told you about.

You can look at the probability that things happened the way they were testified to, or the improbability of those events. You will be told that you can consider the extent to which the testimony of a witness was corroborated, was supported by other evidence in the case, by other testimony, by physical evidence.

And you will be told to think about who to, believe. You can make judgments about whether the inconsistencies, the contradictions that you find are explainable or explained, whether they are important or unimportant. And hearing all of that, you will have to do as each of the lawyers has suggested you must do. Decide whether or not and the extent to which you

should believe Melvin Montgomery, Harry Bennett, Calvin Alston, Carrie [437] Eleby, Linda Jacobs, Maurice Thomas, and the other witnesses who testified in this trial about the involvement of these ten people in the murder of Catherine Fuller.

And you should also, shouldn't you, use your common sense, as all of us must and all of us have, in understanding their testimony, in evaluating their testimony, in taking what they say in this courtroom and trying to picture whether they're remembering a real event, how they're remembering it.

And as I said several times before, suggested several times before, think about who they are, the participants, the girlfriends, the neighbors. Think about the event itself, how quickly it must have happened, how fast it must have happened, the movement involved in dragging Ms. Fuller into the alley.

Mr. Elsten, I believe, described it as – like piranha, like fish, coming and jumping at a body from one place to another; coming in and striking and leaving, other people striking, pushing aside. Think of that event when you make a judgment about Calvin Alston's testimony and Harry Bennett's testimony.

Think about how many people must have been there. You have heard the names of some twenty people. And you have also heard that there were people there. Some of the people who witnesses it don't remember, don't know, [438] can't name others.

These were people who didn't know each other, all of them. They didn't know all of the participants. They didn't know all of the defendants.

Think of the roles in which some of the witnesses said they played; two of them involved in the murder

itself, the beating, the robbery. One of them Melvin Montgomery, just sitting out in the park up until the time this happened, not an extraordinarily different day for him.

Carrie Eleby and Linda Jacobs, interested in one of the defendants, entering that alley at a later time, seeing what they could see. You have to take yourself back there in their shoes and see it the way they did in order to evaluate what they told you on the witness stand.

You have to see it from the point of view of someone who didn't know everybody who was back there, who didn't pay attention to everything that was happening, whose attention was focused on looking for a boyfriend or what Mr. Rouse was doing, on the fight, on the excitement.

You have to take into consideration the fact that Carrie Eleby and Linda Jacobs said that they were using PCP that day and how that affected their ability to perceive this event.

It's not a neat picture. It's not a neat event. [439] It was brutal. It was fast. The people who witnessed it were some of the people who participated in it. And think about that in terms of how you view what they said from there. This courtroom is very different from that alley, from that park, a different setting for those people, as it is different for all of us testifying from a witness stand, being asked questions by twelve lawyers sometimes over a day and a half or a two-day period.

Witnesses who are young, witnesses who are inarticulate, witnesses who quite frankly are not very smart sometimes. Those are just some of the things that you have to think about, some of the things that

you have to do so that you can make a fair judgment about what it is you heard, and a fair judgment about what it is that happened.

Let me talk to you, as I said I would, about some of the witnesses themselves, Calvin Alston and Harry Bennett. You heard a number of times that they got deals; that they made bargains with the Government.

Well, think about those deals, those bargains, those agreements. Think about what it is that it cost Harry Bennett and Calvin Alston to do, and think about it in terms of what they are and who they are and how old they are.

Harry Bennett, who is nineteen years old, may [440] spend as much as 31 years in jail. That's what his potential exposure is, 31 years in jail. That wasn't a cheap deal for him. It's not like he got of scott free. Yes, he's out there now. Yes, part of the deal was that he would not be locked up at that time. He'll go to jail; won't he? He expects to.

It's a judge that's going to make the determination knowing what it is that he admitted he did. Don't you think he's going to go to jail? Don't you think he knows it?

And Calvin Alston could go to jail for the rest of his life. Some deal. He didn't get off scott free, and he never got out. He'll be in jail for anywhere from 15 years to the rest of his life.

MR. DEBERARDINIS: Objection, Your Honor.

MS. VAN SUSTEREN: Objection. That's his exposure. Can we approach the bench?

THE COURT: Yes.

(Whereupon, counsel approached the bench and conferred with the Court, as follows:)

MS. VAN SUSTEREN: What Mr. Goren said, Mr. Alston will be in jail 15 years to life –

MR. GOREN: I thought he said you could. I can correct it.

MS. VAN SUSTEREN: I ask the Court to correct it.

THE COURT: I will correct it.

[441] MR. GOREN: Fifteen years to life is the maximum exposure that Calvin Alston could have, and a judge is going to make that decision based on what Calvin Alston admitted he did.

Lots of discussion about branding these young men. Calvin Alston and Harry Bennett branded themselves. They have labeled themselves murderers, killers, snitches. But that's not the only part of the deal, the bargain. In exchange for that, they agreed to tell the truth, knowing that as a part of the agreement, that if they didn't tell the truth, that they would be prosecuted to the full extent of the law for this crime.

So ask yourself, why would they have a motive to lie? Because you have been told they have a motive to lie. That's why they got up there and told you what they told you, because they have a motive to lie, both Calvin Alston and Harry Bennett.

You have been told they did the best thing for themselves, they have their own self-interest at heart. They tried to stay out on the street as long as they could, cut their exposure as much as they could. They were only interest in themselves.

Well, who wouldn't be? That's not dirty and ugly. That doesn't make them liars. Doesn't it sound smart

to do that? They are out to save their skins. Anybody who is [442] arrested and charged with a crime wants to save his skin. But where is the motive to lie? The agreement said you have to tell the truth. So why isn't the motive to tell the truth? Because if you don't tell the truth, then the bargain is off, and the 31 years becomes everything that Ms. VanSusteren wrote on that board. Thirty-five to life. The bargain's off if you don't tell the truth.

So where is the motive to lie? Well, think about what reasons have been given that these people should lie. It has been suggested to you that they are biased; that they're angry and vengeful; that they're full of hatred and have a need for revenge. Against who? Against who?

And it isn't just these witnesses. Melvin Montgomery, where he identified somebody, motive to lie. Carrie Eleby and Linda Jacobs, motive to lie. Maurice Thomas, a motive to lie. What is Melvin Montgomery's motive to lie on Mr. Catlett? Go back there, discuss it, and see if you can remember one piece of evidence about Mr. Montgomery's motive to lie on Mr. Catlett, or on Mr. Overton, or on Levy Rouse, or on Charles Turner. Think about it, because none was presented; was it?

Derrick, Harry Bennett. There was a motive suggested by Ms. McEwen as regards Mr. Rouse, that he was involved in a love triangle with Trina Ward and that he was attempting to get back at Mr. Rouse because of his [443] relationship with Ms. Ward.

Mr. Seals has suggested that with regard to Ms. Ruffin, it's not a motive to lie on Ms. Ruffin, but Ms. Ward and Mr. Bennett formed the reason for him putting Lisa Ruffin in this, exchanging places with

Trina. We'll talk about that later when we talk about Ms. Ruffin's case specifically.

Ms. VanSusteren suggested he lied because it was in his interest. What about his interest that he should point the finger at Hollywood, at Kelvin Smith? In fact, what about his interest suggesting he should point the finger at Mr. Catlett or Mr. Harris? Why Mr. Harris? Why Mr. Overton? Why Charles Turner? Why Christopher Turner? Why Steven Webb? Why Clifton Yarborough? What was his motive to lie about them?

A reasonable doubt. A reason. Find a reason. What's the reason? I suggest to you that there are no reasons.

Mr. Alston, what reason did Calvin Alston have to lie about these people? Think back. What reason has been given in evidence by anybody testified to why Calvin Alston pointed the finger at Timothy Catlett, or Alphonzo Harris, or Russell Overton, or Levy Rouse, or Hollywood, Kelvin Smith, or Charles Turner, or Christopher Turner, or Steven Webb, or Clifton Yarborough? What reason has been [444] presented why Calvin Alston lied on them?

Carrie Eleby, Linda Jacobs. It has been suggested' that Ms. Eleby had a relationship with Mr. Alston, so she and she was helping him out. So that falls right back on Mr. Alston. Why was she helping him out lie on these people? She had no independent reason; did she? Did she have an independent reason with the one person she had a relationship with, Mr. Smith?

Ms. Jacobs, what reason did she have? To help Carrie out? This lengthy chain of helping people out, but it all falls back on Mr. Alston; doesn't it? And he had no reason at all, at least nothing that is presented to you in evidence.

Now, Maurice Thomas, the only reason, isn't it, that's been suggested why Maurice Thomas would point the finger at anybody is from some suggestion by Mr. Yarborough's counsel that Maurice didn't like Clifton.

We're going to talk about that a little later, too. But why, if he had something against Clifton, would he tell about anybody else? What did Maurice Thomas have against Mr. Catlett, or Mr. Charles Turner, or Mr. Rouse, or Mr. Christopher Turner, or Mr. Kelvin Smith?

Well, if you think about it and if you decide that, "Well, there aren't any reasons why these people would point to these individual defendants," then there must be [445] some other reason for them to lie, some other motive to lie, some other motive to violate the agreement, and by violating the agreement subject themselves to being prosecuted for the whole thing. What is the other reason?

Well, someone else must have wanted them to make up something on these people. Someone else wanted them to point the finger at these ten people, so they did it because they felt they had to for someone else.

Mr. Elsten said that Mr. Goren had nothing to work on, the police had nothing to work on, so they developed a model, and from that model they used it to shake and to shock the witnesses into testifying and pointing the finger at these people.

Okay. That's a suggestion by Mr. Elsten. And implicit in the suggestion is that someone else orchestrated this whole thing. Well, again, we go back to who could orchestrate it? One of the suggestions is the Government the police—we'll talk about that in a minute – or one of these defendants.

Now, very explicitly you have heard some argument that Calvin Alston got together with Carrie Eleby and Linda Jacobs to plot out and plan this whole thing, this testimony about who did it. Because, really, Calvin Alston, Harry Bennett, and Darryl Mercherson are the only three people who participated in this crime. And Calvin, who admitted [446] he did it and who, by the way, admitted everything that – admitted a great deal more than he said in his statement – he didn't just say, "I was just a lookout." He admitted, "Yes, it was my idea. I could have been the lookout. I could have just sat there as Clifton Yarborough asked me to do. But I participated in the whole thing. Yes, I kicked Ms. Fuller many times. I beat Ms. Fuller many times. I went into that garage. I stood there while Levy Rouse inserted that pole in her rectum. I did all of those things, and I got money."

Having admitted all of that, the suggestion is that he got together with Carrie Eleby and Linda Jacobs to contrive this testimony. Well, you have to go back and think about the timing of all of this, because if he did that, he had to do it before November 29th when he gave his statement, a statement that he admitted was not totally true. Some of it he said was true, but the parts about him, not true at all.

It had to happen before November 29th when he gave his statement. Well, what you have to believe then is that Carrie Eleby and Linda Jacobs – Carrie Eleby, who I think you saw had a hard time reading, and fourteen year old Linda Jacobs, got together some night – the suggestion was the one time they saw each other was in Calvin Alston's basement after coming back from Cherry's, so they said they [447] spent the rest of the night together.

Now, picture it because you have to picture it to believe it, that the three of them got together two weeks after the murder or some weeks after the murder and a few weeks before Calvin got arrested. Of course, he didn't know he was going to be arrested; did he? He didn't know he was going to be caught. Nobody knew.

They got together in that basement and they talked about, "Well, Calvin, you get arrested, we are going to make up this story. We're going to name these people and we're going to say we came in in the middle of it. You, of course, are going to give a statement when you get arrested, and you're going to sit in jail for 13 months and not do any kind of plea bargaining or anything else until the last minute. And we – sometime in the middle of the summer we'll come up and tell the truth at that point, or say we're telling the truth."

Can you picture that, them getting together? And then, of course, what did happen? Carrie Eleby, on November 29th, went down and talked to the police. And she told you that she said she told Detective McGinnis what it was that Calvin Alston told her.

And on cross examination or redirect examination it was brought out that this whole thing was two or three lines. That's how much he told her. And what happened that [448] night, November 29th, the day that Carrie Eleby went down and talked to Detective McGinnis? Calvin Alston got arrested. Well, why do you think he got arrested, ladies and gentlemen? What information did the police have on the night of November 29th that led to his arrest?

Well, it was the same day that Carrie Eleby went down and talked to the police. Isn't it natural to

assume that's why he got arrested? It makes no sense to think that Calvin Alston, Carrie Eleby and Linda Jacobs got together and thought up this whole plan. They couldn't have. They're not smart enough.

As Mr. Elsten said before, these are street people, he said, people who don't think of tomorrow.

Well, then the other suggestion is that Harry Bennett got together with Trina Ward and concocted a bunch of this story, too. That Harry Bennett and Trina Ward were very, very close throughout this period. Well, you heard Trina Ward testify that on the same day she gave false testimony about Mr. Rouse, testimony that did not say there was any blood on his pants, testimony that's confused because she was thinking, "I don't want to talk about that," that same day she told the Grand Jury and the police about Derrick, about Harry Bennett. Don't you think that formed some of the basis for arresting him?

She protected Levy, not Derrick, but Derrick and [449] Trina supposedly got together to get revenge on Levy. That doesn't make any sense.

And not only you have to believe they got together, but somehow they all got together. After concocting these stories, they all got together so that they could come here at this trial and present that testimony. Now, that's one of the theories that you have to believe if you think they worked out this whole scheme, if you think that they had a motive to lie based on this scheme that they worked out in the past.

And they came here and told you a story that if you think about fits together very realistically; doesn't it? Now, you have been – you have heard the story told by a number of witnesses. You've heard a number of

lawyers retell the story. I'd like to tell it to you one more time, slowly, not in great detail.

But think about where the various people were as this murder, as this kidnapping, as this robbery unfolded. Think about where they were, what they were doing, who they were with, what they were thinking, because that's the only way you can understand why they saw what they did and why they didn't see some of the things that they say they didn't see.

They were all in the park together. Some people were more active in talking about the robbery; Mr. Alston, [450] Mr. Rouse, Mr. Overton. Carrie Eleby and Linda Jacobs were not there. Maurice Thomas was not there. Mr. Bennett arrived and was there. He was sitting down, he said, on a bench. The others were behind him, talking, some of them singing, Steve Webb ganging on a trashcan by the phone booth.

When they saw Ms. Fuller, a number of them went across the street, according to their testimony, to 8th Street. Some went to 9th Street. Lisa Ruffin was somewhere behind them with a group of other people.

Mr. Bennett said he followed them. He went after the first group went to 9th Street behind Ms. Fuller and some of the others went the other way. He followed them. Now, Calvin Alston said, "I didn't see Harry Bennett there." Yell, Calvin Alston arrived after 4 o'clock, was paying attention to this robbery and talking to Levy Rouse. Maybe he didn't see Harry Bennett. He certainly see him follow him into the alley because he was behind him.

Calvin Alston said, "I didn't look behind me. I was looking ahead of me." And once he got into the alley, he actively participated in beating Ms. Fuller. He wasn't paying attention to who was there and who was

around him or who else was beating on her. He saw some of it. He described some of it. He told you what he remembered. But it's not unreasonable to believe that he didn't see [451] Mr. Bennett. Maurice Thomas did later on.

Mr. Montgomery, who said he saw some of this but not all of it, was sitting a bit aways under a shed. At the time that they left the park, he only looked over briefly, and he heard someone say, "Let's get that lady there," and he saw the four people that he remembered being there all afternoon, and others that he said he might have remembered or had known them but he doesn't remember them now.

They went into the alley. The beating began. They dragged Ms. Fuller down the alley. It was about this time that Maurice Thomas, Carrie Eleby and Linda Jacobs come up. They didn't see what had happened before.

You heard a number of questions. "Well, did you see a vendor? Did you see this? Did you see anybody banging in the park?" They weren't there then. They couldn't have seen it. Those were not contradictions.

When they got there, Ms. Fuller was already down to the cut. From where Mr. Thomas was at the end of the alley – I'm sorry, ladies and gentlemen, I can't find that picture. From where he was at the end of the alley, looking down the alley from across the street, he couldn't tell exactly where everybody was. He said that they were up here near where the garage and yard met, Shontel's yard up here. He saw them from way over there, not far from the [452] area where everyone else said they were. That's not a discrepancy.

You have to understand what he saw from where he was. if you think about what happened, if you think

about the testimony in terms of where people were, when they got there, what they were paying attention to, what caught their interest, what role they were playing, what you heard fits together very realistically; not perfectly, because it wasn't the kind of event that anybody could record and remember perfectly, but it fits together very realistically.

And what you have when you hear that story is a very realistic telling by some very unsophisticated, inarticulate, not very smart people about what happened in that alley that day.

Now, I suggested to you that in order to be able to support the contention that Harry Bennett and Calvin Alston lied, you have to come up with some reasons for motive for lying. And one of them was that they created this story and that these witnesses all have reasons to lie on these people.

We discussed why that doesn't make any sense. There's one other option that's been suggested here and it's the one that I referred to before. It's the police that created this story. It's the police that put pressure on Harry Bennett and Calvin Alston to come into this [453] courtroom and point the finger at these ten people.

Let me just very briefly ask you some questions. If the police or the Government was going to try and create a story, create an event like this, why did they make it so complicated, so complex? Why not two or three people, or five? Why create an event in which it is suggested there were some twenty people there? Why include a young woman like Ms. Ruffin?

And if we're going to include a young woman, why do it – give her such a small role? Because, being very candid with you, her role is the smallest in that she

didn't beat or kick Ms. Fuller. Why not have more people identify some of the individuals here on trial? Why not have it match perfectly?

Most importantly, why these people? There is no reason in evidence or otherwise that would give you grounds to believe that the Government or the police would concoct a story against these people or at all.

Just a few more words about Mr. Alston. He has been called a liar. Mr. Bennett has been called a liar. The only reason anybody can call them a liar here in this court is because Calvin Alston said, "I lied. I lied when I gave my statement to the police about my own involvement and some of the people that I was friendly with. I did it because I wanted to get out on the street. I did it [454] because I had my own interest at heart."

That's the most human, understandable response anybody could ever give; isn't it? He wrote letters to Commissioner Queen in which he said, "I didn't do anything. I want a bond. I want to go home." Well, he did want to go home. He wants to go home now. Anybody who's in jail wants to go home. Anybody who's charged with a crime wants to go home.

And he lied about it. What did you expect him to do? Dear Commissioner Queen: I did a terrible, brutal crime. Would you give me a bond, please? He wanted to go home.

He was assaulted in the jail. He was brutalized in the jail. He was frightened. He was threatened again after that by the people that he had accused of doing it. He was alone there. He was nineteen years old. And out of fear he said he wrote some letters saying, "I made a mistake. It wasn't them."

But he came in here and he told you why. And didn't he explain it in a way that's understandable, that he was afraid, that he was alone?

Mr. Bennett has admitted that on the day he was arrested he gave a statement in which he didn't tell the truth. He lied to keep himself out of it. He was arrested and charged with murder, and he didn't want to put [455] himself in it. He admitted that to you. He is only called a liar because he said and admitted, "I lied about my own involvement, but now I'm telling the truth."

Both men were ridiculed; weren't they, for coming to you and saying, "I feel bad about it now. I feel remorseful now. I did an awful thing. I did a terrible and evil thing." They said it. And everybody said, "Don't believe that. Did you hear that? Don't believe that.

"Well, what if they didn't say it? You see that? They said they did it and they don't feel any remorse at all." They can't win. Damned if they do, damned if they don't.

Why is it that they should be ridiculed and judged harshly for feeling what they should feel, that they did an evil, horrible thing, as did everybody who participated in that murder and kidnapping and robbery that day?

Very briefly, Carrie Eleby, a perjurer. Well, what did she lie about? What did she perjure herself about? She lied about Kelvin Smith in the Grand Jury. She is called a perjurer because she went into the Grand Jury and she tried to protect Kelvin Smith by saying, "He didn't do anything that day."

And she admitted that. And she was pregnant with his baby, at the very least a baby that she thought was his, [456] that she felt was his and that she still believes is his. She went with his mother, didn't she say – and didn't his mother admit it – to go visit him in the jail at some point after he was arrested because she thought she was carrying his baby? So she lied. She's a perjurer, because she went to protect Kelvin Smith.

If anything, if she has any bias at all, that demonstrated what her bias was. Bias for Kelvin Smith, not against him.

And what reason has been given to suggest as to why she changed her mind now? Is there any? That she is in love with Calvin Alston or for Calvin Alston, Calvin Alston who she told the police about?

Calling her one of the PCP twins doesn't help you make a decision about her or Linda Jacobs. They knew they had some PCP that day, and maybe it helps you understand why they saw what they said they saw or didn't see what they said they didn't see, why their attention was only focused on that event at the time they saw the horrible thing that Levy Rouse was doing to Ms. Fuller.

How to Linda Jacobs it was perhaps a carnival of sorts, a fight like at the Coliseum, until she saw what was happening in that garage. It was at that point that they sobered up and left, not paying any attention to what was going on until they saw that, and then they [457] left.

Perhaps that's the reason that Carrie Eleby doesn't recall or, in fact, as Mr. Elsten suggested, wants to distance herself from that garage, wants to say that she stood somewhat outside it over here near the fence

instead of over here near the door where Linda Jacobs said they stood; not wanting to face the reality that she was there and saw that whole thing and did nothing and kept quiet for a long time about it.

One thing you should note, shouldn't you, is that neither Melvin Montgomery, Harry Bennett, Calvin Alston, Linda Jacobs, Carrie Eleby, or Maurice Thomas ever waivered when they were asked about what happened in the alley. Substantially consistent throughout their testimony about what they saw that day.

And finally, in thinking about their own testimony, their testimony is corroborated substantially by the scene, the physical evidence, the finding of all that property in the garage where they say – where Calvin Alston says Snotrag, Mr. Catlett, Clifton Yarborough thought of that purse, the purse was there, where Ms. Fuller's clothes were removed, her clothes were found there.

The injuries described by the medical examiner corroborates, supports everything that you heard about what happened; the number of bruises and injuries, the nature of [458] the injuries, some caused by kicking; the patterned injury on the face, a board, a boot; the shattered liver, the kind of force or number of blows that would be required to do that; the punctured lung and broken ribs; the bruises and injuries about the head. All consistent with the testimony.

And thinking individually about some of the defendants, the corroboration that Mr. Yarborough's statement gives to the testimony about Mr. Yarborough. The corroboration given by the testimony of Trina Ward to the other testimony about Levy Rouse.

The corroboration given by Kaye Porter hearing Mr. Catlett say, "I just kicked the lady. Someone else stuck the pole in her." The statements that were overheard by Maurice Thomas that, "We had to kill her. She recognized someone," as they relate strictly to Mr. Catlett's case.

Mr. Overton and Mr. Christopher Turner, the statements that Detective Villars overheard.

I wold submit to you that what you have heard from those witnesses was a description of a real event by the real people who were there; that it fits together, it's realistic, it's believable. And that no reasons have been suggested that deserve more than a passing thought as to why those people would lie on these people, or lie at all.

[459] Now, you also have to think about the testimony you heard from the witnesses presented by various defendants, and think about some of the arguments that really apply only to individual defendants.

In the case of Mr. Catlett, you have to make the same judgment about Kaye Porter and what it is she heard Mr. Catlett say. Being very brief about it, what reason did Kaye Porter have for coming in here and telling you about what Mr. Catlett said that day if it wasn't true? Why would she make it up on Snotrag, on Mr. Catlett?

Pointing to the fact that she can't remember what she said in the Grand Jury, or she doesn't recall the exact words, but she said, "I think this is what he said." That doesn't tell you the most important thing is why would she come in here and say that this person said that to her. There's only one answer, and I would submit that's because it's true.

THE COURT: Mr. Goren, would this be a convenient time to take a break?

MR. GOREN: Yes, this would be fine.

THE COURT: Ladies and gentlemen, it's now ten to three. Let's take a break for ten minutes. Again, keep an open mind. Do not talk about the case amongst yourselves. I'll see you back here in ten minutes.

(Whereupon, a brief recess was taken.)

[460] (Whereupon, the jurors entered the courtroom.)

THE COURT: All right.

Let the record reflect that the ladies and gentlemen of the jury and the alternates are back, all of the defendants, defense counsel and Government counsel.

Mr. Goren, would you continue, please?

MR. GOREN: Thank you, Your Honor.

Ladies and gentlemen, again I am going to try and be brief, but I want to talk to you a little bit about some of the individual defenses.

Now, we very quickly took a look through Mr. Harris window the other day, and we need to take another look in that room because there were some things that were missed. One of the things that's most important in looking in Mr. Harris' window is to be clear about what it is we see, what is not evidence of Mr. Harris being there or not being there.

I didn't want to overstate that, but Ms. Roberts said that Mr. Montgomery, Mr. Thomas, Ms. Eleby and Ms. Jacob did not see Alphonzo Harris there, and that's true. They didn't. But that doesn't mean that he is not there or was not there.

Mr. Thomas didn't say that Monk was there, Mr. Harris was there. He doesn't know Monk. But he did say there were other people there back behind the group that he [461] saw.

Ms. Eleby and Ms. Jacobs both saw a number of people who they didn't know back in the alley. Mr. Montgomery saw a lot of people in that group who he either didn't remember or couldn't identify.

Mr. Raspberry and Mr. Vincent Gardner, Boo and Bey-Bey, who were at the alley later on that night, didn't see Monk out there. Doesn't mean that he wasn't there.

And when we talk a little bit about what perhaps happened with regard to Mr. Harris that day, maybe it will become clear as to why some people might have seen him and others not.

There are some pieces of evidence that you have to make a judgment about how important they are, and I would suggest to you that there are some things that are made a great deal of that are unimportant.

Mr. Freeman, the vendor, went to the lineup and picked someone other than Mr. Harris out of the lineup as being somebody who might have been running through the alley an hour and a half after the murder. Remember, Mr. Freeman walked in the alley, and after the police were called and after he went back in the alley, he saw some people running up from 9th Street toward him around the garage. They didn't go in. They didn't look in. They didn't come from the garage. And they ran away when the [462] police came.

Well, what does that have to do with Ms. Fuller's death? Nothing. What does the fact that Mr. Freeman

looked to see who those people were and couldn't say, that one of them was Monk have to do with Ms. Fuller's death? Nothing. A smokescreen.

How can it be that those people were there and didn't see Mr. Harris? They did see other people they didn't know or couldn't recognize. There were twenty or more people back there. Their attention was not on everybody. They didn't know Mr. Harris. There's all sorts of explanations –

MS. ROBERTS: Objection, Your Honor. That's not the evidence.

THE COURT: When there is an objection, stand, please, Ms. Roberts.

MS. ROBERTS: I'm sorry.

THE COURT: Ladies and gentlemen, if you hear an objection like that, it is your recollection of the evidence which controls. It is not Ms. Roberts' recollection and it is not Mr. Goren's recollection. It is your recollection that controls.

MR. GOREN: Some of them didn't know Mr. Harris. Most of them, I would suggest, didn't know Mr. Harris. Mr. Harris makes a large point of the fact that Mr. Alston knew [463] him because he played football with him once or twice and that he saw him up around 14th Place. Mr. Alston said, "I don't know where he lives, but he lives up near 14th Place."

Mr. Harris said, "I don't know him. I have never seen him. It couldn't have been me. I didn't play football in 1984 because of two automobile (sic) accidents." You'll look at the records. You heard his answers on the stand. Automobile accident, motorcycle accident; sounds major, but he was treated and released. No stitches, no operation, never stayed in the hospital,

minor injuries. It didn't keep him from playing football because Christopher Turner saw him play football, Kelvin Smith saw him in the streets playing football in September of 1984 when Calvin Alston said he played with him.

Mr. Alston didn't have any trouble identifying him in pictures back in November of last year and knowing his name. Calvin Alston and Harry Bennett knew Alphonzo Harris. Not well, perhaps, but they knew him and they were clear about who he was and what he did that day.

Now, Mr. Harris says, "I wasn't there. I was somewhere else." Let me suggest to you a scenario that the evidence supports very well. Mr. Harris may have been at a friend's house that afternoon. He may have, wherever it is, taken this wire harness off a car that car, this [464] car somewhere up near 9th and Eye Streets, the car which he denied writing Monk on the top of it, Monk of the 8th and H group.

But the one thing he admitted, if you remember, was that he was in the park, through the park at about – a little after 4 o'clock. He then testified he left, went through the park and went to his girlfriend's house.

I would suggest to you that he may have gone to his girlfriend's house, and James Henry may have taken him home, and he may have been home at 6 o'clock. But there was plenty of time, given what he told you he did that day in between, to be in that park and participate in this murder and this robbery.

And if you examine the testimony of the witnesses who testified for Mr. Harris, thinking about who they are, what they said, the things they were certain of and not certain of, you will see that there is a great deal of support for just what I suggested, that Mr.

Harris may have gone there, but has pushed back the times by 30 minutes. That's all it takes.

Now, bias is something that you can take into consideration, and obviously Mr. Harris' three witnesses that testified for him were his mother, his girlfriend, and his best friend, James Henry. Not to be cute about it, but if – using Mr. Harris' example – if Mr. Harris set a [465] house on fire, who would be the last people who would call the police and turn him in? His mother, his girlfriend and his best friend.

MS. ROBERTS: Objection.

MR. GOREN: And I'm not suggesting necessarily that they were lying about seeing him that day, but clearly wrong about the times.

Now, Ms. Brooks, Mr. Harris' mother, didn't see him during the time that this murder took place, didn't see him until sometime around 6 o'clock. Saw him earlier in the day about one or two, a time when he came home, she said. She wasn't sure he did that.

Came home and said, "I didn't get a part off that car." He said he did. Ms. Brooks testified about a day when Mr. Henry called several times. Mr. Henry said he never called; that this was a chance meeting, not an arranged meeting.

Ms. Brooks doesn't know what her son did during the late afternoon hours, 4:30 to 5 o'clock. You heard Artina Powell. Carolyn Powell's sister testified that she saw the two of them. First she said 3:30; didn't she? Then she said four to 4:30 – or, she was absolutely sure it was 4 o'clock. Then when confronted with her Grand Jury testimony, it was closer to 4:30 or five like she said at the Grand Jury.

[466] But she said she was absolutely sure. She said she had a parade that day, but when confronted with the Grand Jury testimony, she said, "Well, maybe I didn't."

Now, what was going on with her? She came down here wanting to help, but she didn't know the times. And it's the times that are most important with regard to Mr. Harris. If you believe that these events happened that day as opposed to some other, it's the times and the uncertainty about the times that are most important.

At best, what Artina Powell saw was James Henry and Alphonzo Harris, I would suggest, sitting in a car around 5 o'clock.

Carolyn Powell, Mr. Harris' girlfriend, she denied he (sic) was a girlfriend, Mr. Harris said it wasn't a girlfriend. But his mother said they were girlfriend and boyfriend. Artina Powell said they were girlfriend and boyfriend.

Carolyn Powell said she saw him every day. She stayed over at the house at least two or three times that week; didn't she? "When Monk's under the hood of a car, I'm under the hood of a car."

She admitted, before she even began her testimony, that she's got a poor memory because of this accident that she's had, and has trouble remembering some things. But she remembered that day so clearly, down to, "I remember [467] somebody asking me the time at 5:40." "Who was that?" "Well, I don't know who it was, but I remember somebody asking me the time at 5:40. That's why I remember when Mr. Harris left and I timed him home." She testified that he got there sometime after she arrived, but in the Grand Jury

she admitted she said that he was there when she got home.

Perhaps most important, she, when she talked about the time he got home, sometime around quarter to four when he got to her house, she was contradicted by Mr. Harris' own testimony; that he got to her house sometime closer to 4:20.

She wanted to help. She thought this harness, this wire harness was important; didn't she? She knew what it was. When confronted, "How did you know?" "Well, I have books at home." She told a whole story about the harness because in her mind that was very important. She was trying to help.

But the thing that she was not certain about is the time.

And James Henry, who Ms. Roberts suggested you may not want to date him but he's not a liar – well, didn't he admit that he didn't tell the truth? Isn't he contradicted by every one of those witnesses about what he was doing there that day? They all said he was there [468] every day trying to see Ida who had this order not to see. Every day. He's up on the porch. He parks the car out there. He tries to see her. Every day he drives around the block and he comes there and he looks for her. But he said, "No, I come to see Carolyn and Monk. I was just there that one day to see Ida."

One day, the day that some holes were punched in Ida Lock's radiator. He went there to see her on that one day, but he didn't see her. She came home and he didn't see her. He didn't see her car which was out there. He didn't see her daughter when she came home. He didn't see anything, because wasn't he really out there to spy on her like he had been for weeks?

Who do you think put the holes in her radiator? Also, didn't he contradict himself a number of times about when he arrived, when Monk arrived, how many times he left the car. The harness, was it left in the car, out of the car. This business with the cookies. Silly things made to be important. Why? Because everybody was trying to help Alphonzo Harris. Fill in that time.

Well, Mr. Harris himself testified – Mr. Harris, who you heard was convicted of carrying a dangerous weapon, something that you can also consider in deciding the extent to which you want to believe him – look at his demeanor, the way he testified.

[469] And think about this. Think about how what he tried to do with distancing himself from everything, from the park, from the people, from knowing all of these defendants; distance himself from the go-gos, distance himself from his girlfriend so that her testimony would be, "Oh, we're just friends. We're not close."

MS. ROBERTS: Objection, Your Honor. Again, he didn't say they were not close.

THE COURT: Again, ladies and gentlemen, it is your recollection of the evidence that controls. It is not either counsel's.

MR. GOREN: And you can consider, in viewing and deciding how much to believe Alphonzo Harris about what his interest is in that trial, and doesn't he also have a skin to save; and doesn't that affect what he might want to testify to from that witness stand?

Perhaps the most telling thing was when he answered questions about how he knows these various defendants of the distancing, pulling away, not wanting to be associated. Telling you things that wasn't he

making them up as he went? Isn't that the way it looked?

He said that he saw – he knew Bo-Bo, seen him one time or two times in the block, saw him go into a house, didn't know him very well. A little later on he's asked, "What about Mr. Catlett?" Well, he was asked about Mr. [470] Catlett first. "Saw him once, a couple times, saw him going into a house somewhere on 9th Street." "What about Mr. Overton?" "Yes, I saw him, too." "Do you know who he lived with?" "No, I didn't know who he lived with." "Did you know where he lived?" "Well, yeah, I saw him. I know where he lived. Up on 9th Street."

"Well, did you see him go into a house? Was it the same house Mr. Catlett went in?" "Yeah." "You assumed that Mr. Catlett lived there because you saw him go in, and you saw Mr. Overton go in there, but you didn't assume they lived together?"

What was he trying to do? Pull away, distance himself from these people and this event.

Mr. Smith, Hollywood, saw him one time driving down the street in a car. "Almost hit me when I was playing ball." "When was that?" Notice that he said it was back in 1984; didn't he? Mr. Smith said it was in 1984. He did that because he has to distance himself.

Couldn't know Calvin Alston. Couldn't have played football in 1984. "Did you know his name?" "No." "Well, how did you remember it was Mr. Smith?" "Well, some people were talking about him." "Well, did they know his name?" "Yeah." "Did they tell you what it was?" "Yeah." "Well, didn't you know it?" "Well, they told it to me. I wasn't sure of it." Distancing, pulling away. Not because, knowing [471] them or not knowing them

is so important. It demonstrates to you what he was trying to do on the stand, that he wasn't being honest.

"Did you ever go through the park?" "That's not my regular route. I used to go this way, this way, this way." Pulling away from the park, pulling away from the people, saying he's not sure to a number of things, because a number of answers to questions would have automatically contradicted other witnesses.

"You said you stayed there. You didn't go home like your mother said you did at one or two?" "I'm not sure." "Tell your mother about getting a part that day?" "Well, I don't recall." "Did you say you got a fusebox from Detective McGinnis?" "Yes, I told him but I also told him about the harness. Even if he didn't write it down, I told him about the harness and the fusebox. The fusebox I was going to get when the police were there. I was going to get that later."

Making things up as he went when he got caught, in not telling the truth. Distancing – even from this car and what's written on this car, his name on the car. Distancing that it was totally abandoned, had to make it a lot worse than it was. What's so important about that car? Pulling away from it. No doors, no trunk, no hood, no wheels. It is abandoned. Why exaggerate? Why even pull [472] away further? Because he wasn't being honest.

And the most important thing is the time. He left the park at around – think back on what his testimony was. Left the park, left some friends in the park at a little after –

MS. ROBERTS: Objection, Your Honor. That was not the testimony.

THE COURT: Again, ladies and gentlemen, it is your recollection of the testimony that controls. It is not Ms. Roberts' and not Mr. Goren's.

MR. GOREN: Didn't he testify that he passed through the park sometime after four, went and sat five or ten minutes, ten or fifteen minutes to get to where he ran into Mr. Henry, sat in the car for twenty minutes or so.

Well, if you think about that, that puts it at around sometime 4:30, 4:35. Then he went into Carolyn's house. Then he came out, sat in the car again with Mr. Henry. Got the cookies, went back into Carolyn's house, went out in the car and sat there for an hour before he went home.

Well, if you think about that, 4:30, 4:35, that's when he says he first saw Carolyn Powell. Ms. Fuller was murdered sometime between 4:30 and quarter to five, wasn't she, when you think about everything that happened?

[473] Melvin Montgomery said it was about thirty minutes or so after Henry moved his car – after Silky moved his car. Why do you think Silky moved his car? Because it was rush hour. It was 4 o'clock. You have to move your car from one side of the street to the other because of rush hour.

Ms. Fuller was last seen at 4:30 around her house or somewhere around there. It was about 4:30 or quarter to five when she was killed. Nobody was certain about the time, the people in Mr. Harris' window, his room.

It's only James Henry who was with him at that time, and it's he who said he didn't get to Carolyn

Powell's until sometime around the time of the murder. I would suggest to you that it was right after the murder, if it was at all that day.

Carolyn Powell lives minutes from the park at 8th and H. Here's a map of that area. The park right here, Carolyn Powell here. Five blocks, six blocks, minutes away. And it's conceivable that he could have gone to the house; that some of these events could have taken place and he still participated in the murder.

And when you combine that with the fact that nobody had any reason at all to point the finger at him unless he was there, I submit to you that he did commit this murder. That Harry Bennett and Calvin Alston both are right, both [474] are accurate, both are being truthful, and that his alibi is full of the big hole, this time element is missing. Even if you believe that that's the day that all this happened, it still doesn't preclude him from being there.

Let me just go on for a minute to Mr. Overton. Very quickly, Mr. Overton's grandmother testified, Ms. Adams. She said her memory is not as good as some of the other people. She told you that she didn't remember a lot of things about that day. And the most important thing is that she told you that she had to be made to remember; that Lottie made her remember about the fact that it was raining that day; about the fact that Lottie was even there.

A woman who followed the same routine for thirty years. She remembered the routine, and they had made her fit the routine into this day. She doesn't know anything about that day except what they told her. Even Lottie told you, testified that she had to help grandma remember; that she didn't remember everything. They had to show her the T.V. to show her it

was raining on the day of the murder, even though the day she remembered, Ms. Adams, it wasn't raining.

They had to tell her that Lottie was there that day because in the day that she remembered, Lottie wasn't there. She was all alone. Sure she was positive that this was the day of the murder, because they made her remember it. [475] They told her it was. She was sure because Lottie and Mr. Overton's mother had talked to her and now she remembers.

But it wasn't the day she remembered. It was the day that Lottie imposed on her, that Lottie created, because the day she remembered she was all alone and none of this happened.

And if you have to base it on what Lottie remembered she remembered things that nobody could possibly remember. When Russell came into the house, what did she remember? She remembered hearing him. "Did you see him?" "Well, I remember his steps. I remember seeing just this part of his legs on the steps."

Now, please, ladies and gentlemen, there's a lot of things you may remember on a given day, but seventy days later you're not going to remember that you saw this part of him on the steps when you saw him coming up the stairs.

"Remember that I gave him a cigarette and he said, 'Thank you, Lottie.'" Why did she remember that? How could she remember that? She remembered when she got a cup of coffee at 4:25. She remembered things that nobody could remember, because she created those things. She was not telling you the truth, because Russell Overton was not there that day. And he wasn't there that day not only because the alibi doesn't work, but because people saw him [476] other places.

Melvin Montgomery saw him at the park all afternoon, because Melvin Montgomery saw him afterwards in the park, after the murder, as did Bey-Bey who saw him in the alley. Ms. Adams may be remembering a day she hit him with a stick when he came in drunk, but it wasn't October 1st, and nobody, Lottie or anybody, can change that, even though she tried.

Mr. Rouse indicated that he was not there. He was not believable. Chris Taylor was not believable. All of the people who are linked up to Mr. Rouse's alibi are in this case. They all had an interest as did Mr. Rouse in distancing themselves from the park and from this event.

Anquetta Taylor, Girl-Girl, Crystal Taylor, Annette Taylor, they don't know anything about what happened in that alley because they said they weren't there. Well, you make a judgment yourself out whether to believe them, whether they were there or not there.

They certainly didn't say they saw Levy Rouse at any time during the murder, or Christopher Taylor any time during the murder. Christopher Taylor, whose voice dropped when you confronted him with what he had said in the past; who was unable to look at you; who kept his head down; who didn't recall the answer to any difficult question, any question that forced him to go beyond this [477] story that he had memorized.

"What clothes did you have on?" That was a question that was asked of him. Didn't he describe the clothes that he had on? A blue shirt with little alligators, some jeans and a cap.

He had problems the first day, confronted with all sorts of things. The second day when he came back, he

told us that well, he had smoked lovely every day during that whole period. That's why he didn't remember. He didn't say anything the first day, but the second day he discovered, "Well, I don't have to answer those questions because I don't remember anything because I was smoking lovely. Well, I remember being in the office. I remember some police officers, but I don't remember what I said. If you say I said that, I don't remember any of that."

Ms. McEwen said, "Look, he was upset, he was under a lot of pressure." You notice that whenever he was asked about those times, he reacted funny because he was under pressure.

Whenever you asked him about those times, the time in January when he told the police that he was there and saw what happened, the time in April when he said it again, the time that evening of January 16th when he said it to Detective Gossage, he looked down and looked the way he did because he was not telling you the truth.

[478] And you remember that Harry Bennett said he was there, too. Of course, then there is Mr. Rouse who told told you the same story that Chris Taylor just told you. Times the same. Where they went the same. And it's not that he told the same thing, because it's true, if it had really happened they both would remember where they went.

But he couldn't go beyond the details of the story. When you think about something, you look back in your head and you see a picture. You can answer questions about what happened because you got a picture of it in your mind. If you make it up, there is no picture to look at. You have to think quick. You have to answer

questions. You have to invent it as you go, and he couldn't do that.

Notice that neither one of them ever said they had any contact with anybody that day except for the people in this case or members of Chris Taylor's family. His sisters, Fella, Bo-Bo, each other.

Mr. Rouse, in telling what happened that day, didn't he go back and forth? Didn't he say basketball once then craps another time? Didn't he say at one point, "Well, I was – Chris went into the Chinese store for about an hour," and then two minutes later he said it was about twenty to thirty minutes? He couldn't remember what he said from one minute to the next. He changed what he said from one minute to the next as it suited him.

[479] The business about the gun, a blank pistol at first, a toy gun. Then it became a plastic gun, then a shattered plastic gun, broken. "I threw it away." "Why did you throw it away?" Some talk about the first of the month. Went on and on and on.

Seeing Bo-Bo. Didn't he testify before a break, "I saw Bo-Bo, Russell. Overton, in the park wearing a white coat"? He went back into the cell block during the break. Did they talk back there? Did something happen back there?

He came back out and said, "I don't remember who it was. All I remember is it was a white coat."

Mr. Rouse, I would submit to you, boldly came in here, and he thought that he could talk his way out of this whole thing. He changed his story from minute to minute as it suited him.

He showed you his ability, willingness and interest in telling the truth. On the 3rd of October he came

down to this courthouse, nervous, rubbing his leg nervously, and made a whole bunch of inquiries to find out if anybody knew anything yet.

Rode around the block when Vincent Gardner was talking to the police. He was very interested because he knew what he did. Ms. McEwen made it sound like, didn't she, that he was the only person in this whole community who came forward to give information about what happened? [480] Do you believe that?

Very quickly think of the story he told about leaving the house and what time he got up, making it up as he went. One final thought on Mr. Rouse. One of the things he did continually was repeated questions. He didn't know the answer. He needed time to think.

"Where did you go from there?" "Where did I go from there?" "Yeah, where did you go from there? How long did you stay out there?" "How long did I stay out there?" "Yeah, how long did you stay out there?" Continually a technique to give him time to think about the answers.

Trina Ward told you some things about Mr. Rouse. She told you that she saw blood on his pants on October 1st. She told you some of the things that he said, that he admitted to her in the hospital, that he was there. That at some point he said to her, in a threatening way, because she said something to him after he had done this crude thing in the kitchen, "I don't worst things than that. I done the worst thing to that lady in the alley." And he did: didn't he?

And the proof is not just in those statements but in the fact that witnesses – five people say that Levy Rouse did the worst thing to that lady in the alley.

I'm not going to dwell on Trina Ward. Her testimony speaks for itself. You have to make a judgment [481] about whether that's a believable person. If the reasons why she lied to the Grand Jury are explainable, then who was it she was biased for then? Levy Rouse. She protected. Levy Rouse. Not Harry Bennett, who she testified about in the Grand Jury. But Levy Rouse.

Ms. McEwen made a big deal about the fact that they are now lovers. What did she say? The day after he testified, she began seeing him again. She didn't see him from back in the beginning of the year, all the time she was pregnant, until this trial started. But for some reason, Ms. McEwen suggests they were still involved and made up this story about Levy.

If anything, she was pro Levy, bias for Levy. Now, that whole scenario about Levy, Trina and Harry Bennett is also important in thinking abo Ms. Ruffin. Let me just jump ahead for a minute and say to you that – well, Mr. Seals suggests that the way Ms. Ruffin got involved in this case is that Harry Bennett needed somebody to protect Trina Ward, because when he came in here in February, February 6th and gave his original statement, he said Trina was there. He said he said it because he was mad at Trina.

There's no way to justify that. It was a petty, stupid, immature, dangerous thing for anybody to do. And that's the kind of person he was back then. And that's the [482] kind of person maybe he is in many ways. But in April, still not having seen Trina Ward – he didn't see her between February and April. When he got arrested again, having been released, in spite of the fact that the U.S. Attorney's office, he told you, asked to have him held back then, he got arrested on a drug charge.

He didn't want to go to jail. Who would? He started saying that he would tell what happened. Asked about Trina, he said, "Trina wasn't there." Now, Mr. Seals said he needed somebody to replace Trina, because he's already committed himself to a girl being in the alley.

Why did he have to replace her at all? Why couldn't he have just said, "There were no girls there. I was mad at Trina. There were no girls there," or, "There was a girl there but I didn't know who it was," or, "There was a girl there. I knew her nickname but I didn't know her real name"? There were a number of ways that Harry Bennett could have said she wasn't there, there was nobody there, I was mad at her and I made that up.

Why did he have to put anybody in her place? He didn't. And more importantly, why did he put Lisa Ruffin in? Why did he put somebody that he knew in there, that he told you he was friendly with because she was very close to Nicole Logan who lived down the street, who Harry knew and was close with? Why Lisa Ruffin, if it wasn't true that [483] Lisa Ruffin was there?

I submit to you that there is no reason. Once again, there is no reason why Harry Bennett would say anything about Lisa Ruffin if it wasn't true. And you think about it. There is no reason you can think of, no reason that has been presented to you at all, except that she was really there. Nobody forced him.

You heard Ms. Ruffin isn't known by most of the people here. It's not like the police were out to get a group of people and Lisa Ruffin was a part of the group. Lisa Ruffin didn't have a whole lot to do with these people, individually.

Why Lisa Ruffin? Mr. Seals said Lisa wouldn't commit a crime like this on people she didn't know. Let me suggest what happened to Lisa Ruffin that day. She was in the park with some other people. There were other people there. You heard testimony about Mike Campbell, who she was with, was seen with in the park – in the alley. Some younger people, Vincent Bugbay and some others. She was sitting in the park. They decided, a number of people decided to rob Ms. Fuller. They did it loudly. People knew about it.

She heard it. The other people heard it. They all followed her into the alley while they kidnapped Ms. Fuller, dragged her down the alley. Lisa Ruffin went in and [484] followed. Not merely present. She was curious perhaps at first knowing something was going to happen, knowing perhaps what was going to happen. She knew when she saw it.

Did she leave? No. Did she help? No. Did she say anything? No. She followed down the alley while they continued to kidnap Ms. Fuller, beating her. When they got to that point where they started stripping things off of her, she was seen leaning down.

Was she with all those people? No, not in the sense that she knew them and was friendly with them, but she was there and she helped. Her relationship with them at that point was clear; wasn't it?

She followed them into the garage where she got a ring. She participated and is as guilty as each and every one of them. And the fact that she didn't know Calvin Alston or some of the other people, or they didn't know her, doesn't mean she wasn't there, doesn't mean she isn't guilty.

Now, Mr. Smith, Hollywood. Mr. Smith and Mr. Christopher Turner both have similar alibis. Call

them the upstairs alibi and the downstairs alibi. Both in the same house. Both depended on the same people.

If you think back – I could go in and talk, about all the inconsistencies and the stories. Ms. [485] VanSusteren, I believe, made the point about Dr. Bray. Think back and when Dr. Bray testified and you will come up with all sorts of answers. That's the point.

You can't remember when Dr. Bray testified, because it was not when he testified that was an important event. You can't remember the date. But all of these people did, not two weeks ago or a week ago or whatever it was, but seventy days later they all remembered. And they remembered it in some detail.

Inconsistencies about all sorts of things. The time, who came home first, what people were doing at the time they came home. Think about – and you can remember those. You heard the testimony. You remember it as well as anybody. That's not the important thing about Mr. Smith's alibi or Mr. Turner's alibi.

It is important in thinking about it to remember the way they testified, and it's not really a situation where you're damned if you do and damned if you don't, remember too many details, remember not enough. It's not the number of details that you remember that is important. It's watching people remember an event. It's making a judgment from what they tell you and how they tell you and the reasons why they remember one thing as opposed to another. Making a judgment about whether they're being honest with you and whether they're being accurate with you.

[486] Ms. Anderson, Mr. Smith's grandmother, followed the same routine every day. She described October 2nd and October 3rd to you. It's the same

thing. The only way she can say that this was the day of the murder is because Kelvin told her he got a call from Tracey Dee.

So, if you follow that all of the way up the line, what you end up with is Tracey Dee is the key to this whole thing for Kelvin Smith, because he got a call from Tracey Dee that day telling him about the murder.

And when the call came is real important, too, because it came when Denise Riddick got there, a little bit after Denise Riddick got there, the friend who got there after work. She said, "The latest I got there was 5:45," didn't she?

They already knew about it when mom got home, when Ms. Shields got home, around 6 o'clock. They knew about the murder the day of the murder before the police discovered the body, and they heard it from Tracey Dee, who heard from Christopher Taylor, who found out about it because he was down at the alley, he told you, later on at night.

It's an impossible alibi. It's like taking a chain, taking one link down here, Ms. Anderson, and another link, Kelvin Smith, and another link, Ms. Shields, and another link, Ms. Riddick, and hanging it on this nail [487] called Tracey Dee. There's nothing there and the chain falls on the floor. It's an impossible alibi.

You have to view Mr. Smith's testimony. I will ask you do you want to give the keys to your apartment to Mr. Smith, also? But it's a foolish example, and I'll talk about it a little later on, because it's not the kind of thinking that you want to go through in making a decision about who to believe in this case. We're not talking about who to give the keys to your apartment to for a week. Who do you believe and why do you believe them?

Mr. Smith, who contradicted his grandmother and contradicted some of the other witnesses about going into her room and getting the phone and all sorts of little things that tell you perhaps he's not talking about a real event or the same day; talking about going into her room and when he found himself there he was there for five minutes. "What were you doing?" "I was combing my hair." "For five minutes?" "Well, I was also putting on deodorant," making up things as he went, not remembering, distancing himself from Carrie Eleby in a way that showed you that he was making that up, too.

"It's not my baby. It couldn't be my baby. I didn't start seeing her until a couple of weeks after October 11th." "Well, that's sometime in late October." "Well, it was after Crissie's birthday, October 26th." [488] "When did you have sex with her?" "A week after Crissie's birthday." "Well, that's November 2nd." "Well, no, it couldn't be then. That's when I started seeing her." He kept changing the story. Why did he do that? The baby is not his, he claims. And the baby not being his meant he had to put off when he started having sex with Carrie Eleby, distancing himself from that, not answering questions.

"Well, when did Tracey Dee tell you about the murder?" Everybody testified it was before 6 o'clock because that's when they were told about it.

MS. VAN SUSTEREN: Objection. That wasn't the evidence.

THE COURT: Again, ladies and gentlemen, it is your recollection that controls. It's not Ms. VanSusteren's or Mr. Goren's.

MR. GOREN: "When did you get the call from Tracey Dee?" "I don't know." "Well, was it before 11

o'clock?" "I don't know." "Well, was it early in the day?" "I don't know. I don't know. I don't know."

But the testimony was clear, wasn't it, that it came before six, around six, at an impossible time, all based on Rene Walker. Rene Walker, who was firm in that she was going with Beany then; who was firm that this happened on a weekend, on a Saturday. Said so in the Grand [489] Jury. She said, "I was going with Beany. I talked to Beany on the phone." Oh, by the way, she said in the Grand Jury, "I called Hollywood." "Did you reach him?" "No, there was no answer that day." But now she says she called him. Going with Beany. "When did you first meet Beany?" she was asked in the Grand Jury. "November 16th. That's the day we first met."

So then this happened after November 16th. And maybe it did. Maybe it was an event that happened after November 16th, but it didn't happen on [illegible]ber 1st.

The same witnesses in the downstairs alibi, Ms. Shields, Latonia Smith, Mr. Kelvin Smith's sister, Denise Riddick, testified about that same phone call, about it coming in that afternoon, about Crissie being there and again talking about the inconsistencies in their testimony, about the times and where people were at.

The bottom line of that you still have to pin that on the Tracey Dee hook which isn't there. It isn't there for months. It can't be there for months. The whole alibi falls apart.

But think about Christopher Turner. Mr. Deberardini said, "Mr. Goren, Mr. Behm, they didn't hurt him on cross examination." Christopher Turner, who remembered that day very well, think of his demeanor, how cool he was on the the stand; how he couldn't even

wait for a question to be [490] asked before he started answering it; who told us all about himself; who had an answer for everything; who liked to talk; who explained everything; who argued with Mr. Behm about – when he started asking, "Were you boxing? You said you were too hurt to work. Were you boxing?" he started arguing with Mr. Behm; didn't he?

Take a look at the way in which he testified in making a decision about whether he was telling you the truth. And think of this. That when he was arrested by the police, he told the police, "I wasn't there. I was over Kelvin's house. I have three alibi witnesses. I have three people who can say I was there." He was ready the day he got arrested, Sunday, December 9th. He knew where he was seventy days before, and he was ready.

And he was ready to be cross examined. "Why didn't they ask him about the statements to Detective Villars? Why didn't they cross examine him more?" What do you think the answers would have been? Do you think all of a sudden he would have confessed on the stand? He was ready. He knew the answers. He knew what record he listened to. He knew all the details of that day.

"I got up. I went into the den. I listened to the New Edition cut. I laid down on the couch. Latonia came over 2:30 to three. I watched the stories. She fixed something to eat. I watched One Life to Live. I [491] watched the video, Donkey Kong. I watched Inspector Gadget. Ms. Anderson, Kelvin's grandmother came in. She went right into the kitchen."

He knew everything about that day. He had an answer for everything because he's been ready for this day for a year, over a year, since October 1, 1984.

Asked about Sunday, he knew about Sunday, as long as you were talking about the T.V. schedule. He watched two football games. But beyond that, he couldn't remember, because nobody could. Nobody, the day they're arrested, could say, "Oh, yeah, I was at Kelvin's house. I know exactly what I did." You couldn't do that. But he was ready.

And two of them said that they talked –

THE COURT: Which two are you speaking of?

MR. GOREN: Mr. Christopher Turner and Mr. Kelvin Smith said they talked to Vincent Gardner, who came in here and said he didn't call anybody. Christopher Turner, who denied coming up to Vincent Gardner the day after he went down to the police station to give a statement, and who Vincent Gardner said was very – "What were you doing there? What did the police want? You snitch about the death of the lady in the alley?" Why was Christopher Turner interested For the same reason that he got his alibi ready and was ready the day he got arrested. Because he was there. He [492] participated and he's guilty.

Charles Turner, Fella, no real alibi; is there? His mother comes in and his brother and says things about seeing him. He even denied that. He was all alone. He was there when Levy and Vincent Gardner – whoops, Vincent Gardner again. Vincent Gardner didn't go there that night.

Even the alibi he had is locked up to all the people in the case except for Vincent Gardner blows it wide open, because Vincent Gardner didn't see him that night.

Before I leave Christopher Turner, there was a great deal of some three witnesses who testified about his

reputation in the community for peacefulness and good order. That anybody who would have the reputation he had is not capable of doing something like this. How could she be fooled? How could people like this be fooled? People are fooled all the time. Because he was nice to an older woman at work, or a teacher, doesn't mean anything about what he did on October 1st, the day she wasn't around.

The fact that they liked him and that he was helpful, what does that say about October 1st? Don't be confused. No one here at this trial is trying to say that all or any one of these people is a bad person. That's not the issue. The issue is did they do a bad thing on October 1st? That's what you have to look at.

[493] Mr. Webb, also. The testimony from a very distinguished lady who lives next door to Mr. Webb, who has talked to the neighbors, and the people on the block think he's a nice guy. Maybe he is a nice guy on the block. Maybe he always was a nice guy on the block. But none of those people were with him on October 1st. None of those people are with him all of the time. Those are your neighbors. Those are the people you live with. People often act differently there than they do with their friends. People often fool their neighbors and their parents and other people who are, quote, important to them, close to them.

Mr. Webb says nobody named – Calvin Alston didn't mention Steven Webb's name when he first gave his statement. Mr. Webb can't have it both ways; can he? On the one hand, don't believe Calvin Alston because he's a liar. He lied when he got up here and said Steven Webb was there. But you can believe him when he gave a statement back in November because he said Steven Webb wasn't there. You can't have it both

ways. You've got to decide, was Calvin Alston being honest when he testified on the witness stand?

And if he was, then he was being honest about Steven Webb. He said he wasn't asked about Steven Webb. He never thought about Steven Webb back in November. He [494] thought about him. He wasn't trying to be accurate or complete. He was thinking about himself.

There is no reason why Mr. Webb would be named by Mr. Alston or Ms. Eleby or Mr. Bennett, no reason, unless he was there. It's another one of those cases where everybody is making everything up but nobody can tell you why. The only answer is because he was there and he did just what those three people said he did.

Finally, Mr. Yarborough, I would argue, very strongly corroborates all of the testimony about him himself. Now, think about Mr. Yarborough's statement and what he said. He said that he was there, present. He said that at some point he handled some money that was given to him to hold. He was going to take and run with it, he said.

He said he was in the park, corroborating what the witnesses said about him being the park at the time that the conversation took place. But he didn't want to have any part of his statement that he left, that he left and went to the alley and he watched the whole thing. He saw only what someone who was in that garage could have seen.

I would suggest to you that what happened with Clifton Yarborough's statement back in December of 1984 is exactly what you saw happening with Harry Bennett when he [495] gave his statement, and Calvin Alston when he save his. What did they do? They said,

"Well, I saw it but I didn't do anything. I didn't do anything." They thought of themselves. They protected themselves.

Did they make up that story? Mr. Yarborough suggests Mr. Yarborough made up the story because the police put pressure on him, the police told him what to say. Did you see the police telling him anything? Did you see the police correcting him about anything? All you saw was him talking in narrative form, not yes or no, telling what happened. And he did, didn't he, just what Calvin Alston did and just what Harry Bennett did? He denied his own involvement in any sustantial way.

He admitted some of the little things like handling the money. What did Calvin Alston say about Clifton Yarborough in the garage? That he was fighting with Snotrag over the purse; that he did have the money; that he paid him a couple of days later.

Clifton Yarborough confessed –

MR. ROBINSON: Objection.

MR. GOREN: – in his own way –

MR. ROBINSON: Objection.

THE COURT: Overruled.

MR. GOREN: – by telling the police in that videotape, doing just what Harry Bennett and Calvin Alston [496] did, by doing the normal thing, by knowing he was caught and telling everything, except not himself.

It would have been better if there had been no deals made, no bargains. It would have been easier for the Government. It would have been better if there were

no drugs involved. It would have been better if nobody ever lied about anything.

It would be better if Harry Bennett didn't have a bargain with the Government. It would be better if he wasn't running around on the street; wouldn't it? But you might think, and I submit that without him, there might be a whole bunch of people who murdered Ms. Fuller running around loose on the streets.

MR. ROBINSON: Objection to the inference, Your Honor.

THE COURT: Overruled.

MR. GOREN: There might be a whole bunch of people running around loose without having made that bargain, that agreement. He'll go to jail; won't he? A judge will make a decision about him. But it would be better if there were no drugs, there were no bargains, there were no lies. It would be nice if there was some very nicely dressed woman or gentleman driving by who saw the whole thing, that knew everybody and could identify them, or if the police happened to go by and caught everybody in the act; Levy Rouse, [497] pipe in hand. That would be much better, but nobody came forward. Maybe nobody saw it. Maybe they did, but nobody came forward. After an exhaustive and intense police investigation, the only witnesses who came forward or were brought forward who were found, you have heard from.

And who else – one of the things that you have to think about is, because there were no passersby, there were no police, there was no woman looking out the window, there was no other more respectable witness around. Who else would you expect to testify about an event like this except for the people who saw it? And who do you think were the people who saw it?

It's only the people who saw it that could come in here and tell you, and the only people who would see see something like that are people like Carrie Eleby and Linda Jacobs, Harry Bennett, Calvin Alston, Melvin Montgomery who spent his days in the park. Who else would you expect?

Carrie Eleby admitted she used PCP. She saw the murder. She kept quiet about it for a long time. She protected her boyfriend. That's the kind of person that would have witnessed something like that. That's the kind of person you would have expected to be there. It's not the kind of person you'd give the keys to your [498] apartment to, no.

But, who else do you expect to be back there? Who else but the participants and the friends? Who else could tell you except someone who was back there? The question here is not whether they are nice people or whether they are people you want to date or whether they're people who you want to give the keys to your apartment to or who you trust about calling in a fire alarm. That's not the issue.

The issue is truth, not trust. Who do you believe; not who you trust in the sense that has been described in some of those examples. If you were thinking about your apartment, you would only give them to a very close friend. You wouldn't even given them to Judge Scott. You don't know him well enough. That doesn't mean you wouldn't believe him. Or to me. You don't know me. Trust is the issue here; not truthfulness.

You wouldn't go and have to take advice if you were thinking about an operation or medical operation from anybody but a doctor; right? Not from me or from a neighbor or from anybody else. You want an expert. Somebody who knows what they're talking about.

You wouldn't buy a car from anybody but a car salesman who is somebody who knows something about cars. Well, I submit to you that important decisions have to be [499] made with the advice of people you trust in deciding about those things, people who know about them. And who else would know about a murder except for the people who participated in it, a murder like this, and their friends, and their girlfriends? Only the people who were there, only the people who would witness it and not stop it, who would witness it and keep quiet about it; who would remain loyal to the people who did it, people who use drugs, people who live out there in that park.

Judge the believability of these people by a standard that fits this situation, that fits these people. Think about who they are, what they are. That's the kind of thing that you have to make a decision about.

Now, finally, you have for the past three days listened to all of us talking about the evidence, argue it. Sometimes you might think I have expressed my own personal opinion.

You have to forget all that. If you were going to decide what happened that day, you have to forget about the last three days in some ways, because while it may be important, the final judgment, the most important thing is to take back with you not the statements of counsel. Forget me. Take back there the image of Melvin Montgomery, Calvin Alston, Harry Bennett, Carrie Eleby, Maurice Thomas and the other witnesses. Take them back there and sit [500] quietly and think about it. Think about who they are. Think about what they saw. Think about how impossible it would have been for them to have invented what they told you, how impossible it would have been for them to have created this story if it wasn't true.

Think about the way they behaved on that witness stand, because that's really the best way of deciding whether to believe them. Think about when Harry Bennett cried when he told you Ms. Fuller's last word, "Stop." Think about those tears. Think about that face. Think about those emotions.

Think about Linda Jacobs, how she broke down when she had to think about that moment. You tell me, thinking about that, that she didn't see it, that he didn't see it. Think about Calvin Alston and the way he behaved and how he got all torn up when he started, talking about that moment.

Think about Melvin Montgomery and how he didn't want to be here. It was obvious; wasn't it? But he was not swayed one bit from what – he wasn't confused. He couldn't be swayed one bit about what he saw. He had nothing to do with it. He saw it begin.

Take those images back with you into the jury room. There is no reason why any of those people would have lied about any of these people, I submit. And taking [501] those images without all of this, without us, without our arguments, just taking those images back with you into the jury room, look at them, think about them, talk about them.

It's clear, isn't it, that they were telling you about a real event; that they were here for doing one thing. Not lying. They couldn't have lied that well. They were here and they told the truth about what happened to Catherine Fuller in October of last year.

They told about what they did. They told about what each of these defendants did. They were honest. Isn't that the decision you will make after you take those images back there into the jury room?

When this case began you were told by counsel that there was no evidence to link any of these defendants to the death of Catherine Fuller on October 1, 1984. You have heard the evidence now. And I submit to you that a careful, fair review of that evidence shows you that Timothy Catlett, Snotrag, is guilty of all four counts for which he is charged; that Alphonzo Harris is guilty of all four counts for which he is charged; that Russell Overton is guilty of all four counts for which he is charged; that Levy Rouse is guilty of all four counts for which he is charged; that Felicia Ruffin is guilty of all four counts for which she is charged; that Hollywood, Kelvin [502] Smith, is guilty of all four counts for which he is charged; that Charles Turner, Fella, is guilty of all four counts for which he is charged; that Christopher Turner is guilty of all four counts for which he is charged; that Steven Webb is guilty of all four counts for which he is charged; that Clifton Yarborough is guilty of all four counts for which he is charged.

There is no reason why anybody would come in here and lie about these people. There is no reason why the Government or any of those witnesses would create the testimony and the events that you have just heard described unless it was true.

Thank you.

* * *

[613] SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CRIMINAL DIVISION

F-8617-84

UNITED STATES OF AMERICA

vs.

TIMOTHY CATLETT,

Defendant

F-6914-84

UNITED STATES OF AMERICA

vs.

ALPHONZO L. HARRIS,

Defendant

F-8613-84

UNITED STATES OF AMERICA

vs.

RUSSELL L. OVERTON,

Defendant

F-8614-85

UNITED STATES OF AMERICA

vs.

LEVY ROUSE,

Defendant

F-5125-85

UNITED STATES OF AMERICA

vs.

FELICIA A. RUFFIN,

Defendant

F-8616-84

UNITED STATES OF AMERICA

vs.

KELVIN D. SMITH,

Defendant

F-8513-84

UNITED STATES OF AMERICA

vs.

CHARLES S. TURNER,

Defendant

Washington, D.C.
Monday, December 16, 1985

Carolyn Sargent-Burns, CP, RPR, CSR
Official Court Reporter Telephone: 879-1036

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* * *

[622] AFTERNOON SESSION

2:40 p.m.

THE COURT: Call the case.

THE DEPUTY CLERK: This is the matter of United States versus Mr. Timothy Catlett, co-defendant Mr. Alphonzo Harris, Russell Overton, Levy Rouse, Felicia A. Ruffin, Kelvin Smith, Charles S. Turner, Christopher Turner, Steven Webb and Mr. Clifton Yarborough.

THE COURT: All right.

Let the record reflect that all of the defendants and all of the defense counsel and Government counsel are present.

I have received a note which reads as follows: "We, the jury, have reached a unanimous decision on eight defendants. On two defendants we have not been able to reach a unanimous decision. We believe a unanimous decision is impossible on two defendant." Signed by the foreman.

It is my intention, just for the purpose of running this in an orderly manner, to send this note into the foreman. "Dear Mr. Foreman, please list the names of those defendants concerning whom the jury has reached a unanimous decision. Do not (underscored)

state what the verdicts are, just the names of those defendants."

Now, the reason I am going to do that is after the verdicts on the eight have been rendered, I will ask the [623] jury to go back and continue their deliberations on the other two.

MS. McEWEN: Your Honor, I would ask that the Court also add to the note that you do not wish them to tell you what their division might be as to the other two defendants when they do reply to your note.

(Pause.)

MS. McEWEN: Thank you, Your Honor.

(Pause.)

MS. McEWEN: Your Honor, will the Court give them the Winter's instruction?

THE COURT: Not at this time. I, want to admonish the members of the audience and anybody else that there will be no display of emotion when any verdict is announced.

(Pause.)

THE COURT: All right. Bring the jury in, please.

* * *

[639] THE COURT: All right.

Ladies and gentlemen, the Court at this time understands that the jury has not reached a unanimous verdict on any of the charges with respect to the defendant, Russell Overton, and the defendant, Christopher D. Turner. The Court would ask that you go back to continue your deliberations with respect to the guilt or innocence of those two defendants with respect to each of the four charges.

Thank you very much.

(Whereupon, the jurors left the courtroom.)

* * *

[644] THE DEPUTY CLERK: In the matter of United States versus Russell Overton, co-defendant Mr. Christopher Turner.

THE COURT: All right.

Let the record reflect that Mr. Deberardinis and Mr. Palmer are present, and Mr. Goren. The jury is not present.

The note is from a particular juror. The note, in addition, was signed by the foreman under the instructions that all messages come to the Court with the foreperson's name on it.

It reads: "I personally don't want to deliberate any more on Russell Overton or Christopher Turner. [645] We have taken a vote on these two defendants more than ten times with most of the people never changing their decision. Personally, I don't want to go over their case any more."

I do not intend to respond to that since it was not a note from the foreman indicating any inability, unless –

MR. DEBERARDINIS: Excuse me, Your Honor. On behalf of Christopher Turner, I would move for a mistrial.

THE COURT: What about you, Mr. Palmer?

MR. PALMER: I wanted to hear what Your Honor had to say before I respond.

THE COURT: All right.

I was simply going to let them sit in there and send them on back. If both sides agree that they want me to give the Winter's charge at this time, I will be glad to do so.

MR. GOREN: I am not requesting one at this time.

MR. DEBERARDINIS: I would simply renew my motion, Your Honor. I think the note is clear.

THE COURT: It just says he doesn't want to.

MR. DEBERARDINIS: Yes, Your Honor. I think telling them to deliberate further is by its very nature concerning his note, coercive. Considering how far they've gone and that it's the Christmas season, I think he will feel coerced.

[646] THE COURT: I don't feel he will feel coerced to change his vote. I think – I think he's unhappy with having to sit.

All right. We will wait until our usual time, then send the jury back to the place where they are being lodged.

MR. PALMER: I will not ask for a mistrial at this time, Your Honor. I think they can deliberate some more.

THE DEPUTY MARSHAL: Any reply at all?

THE COURT: No reply.

MR. GOREN: Thank you.

THE COURT: I beg your pardon?

THE DEPUTY MARSHAL: You said the regular time. Are we talking 4:45 or 4:30?

THE COURT: 4:30 I want them all to be back here in their regular seats.

(Whereupon, a recess was taken.)

THE COURT: Do you want your defendants?

MR. DEBERARDINIS: We will waive.

MR. PALMER: We will waive.

THE COURT: Tell the marshal to bring in the jury in, please.

(Whereupon, the jurors entered the courtroom.)

THE COURT: All right. Let the record reflect [647] that the ladies and gentlemen of the jury are present. Counsel for Russell Overton and counsel for Christopher Turner are present. The Government attorney is present.

Ladies and gentlemen, it is now 4:35. I am going to recess for the day. You will again go with the marshal and do not talk about the case with anybody else on the jury this evening. Don't even think about the case. Just go back and I will see you down here tomorrow morning at 9 o'clock.

All right. Thank you.

THE FOREMAN: Your Honor, did you receive the letter that was sent in to you, the message?

THE COURT: I did.

THE FOREMAN: Would you kindly give me some instruction as to what our procedure is to be now?

THE COURT: Your procedure is that all twelve of you will continue to deliberate.

THE JURORS: Thank you.

THE COURT: That is your duty. It is the duty of all twelve of you to deliberate on this matter.

(Whereupon, the jurors left the courtroom.)

* * *

[244] SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CRIMINAL DIVISION

Criminal Action Numbers

1984 FEL 8612
1984 FEL 8616
1984 FEL 8614
1984 FEL 8615
1984 FEL 8617
1984 FEL 8513
1984 FEL 8613

UNITED STATES OF AMERICA

versus

CHRISTOPHER TURNER
KEVIN SMITH
LEVI ROUSE
CLIFTON YARBOROUGH
TIMOTHY CATLETT
CHARLES TURNER
RUSSELL OVERTON

Codefendants.

Washington, D.C.
Tuesday, April 24th, 2012

The above-entitled action came on for a jury trial before the Honorable FREDERICK WEISBERG, Associate Judge, and a jury empaneled and sworn in courtroom 202, commencing at 9:30

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Government:

James Sweeney, Esquire
Kaci Weston, Esquire
Colleen Kennedy, Esquire
Assistant United States Attorney

APPEARANCES CONTINUED ON NEXT PAGE

[245] APPEARANCES CONTINUED

On behalf of Defendant Turner:

Barry Pollack, Esquire
Washington, D.C.

On behalf of Defendant Smith:

Donald Salzman, Esquire
Washington, D.C.

On behalf of Defendant Rouse:

Veronice Holt, Esquire
Washington, D.C.

On behalf of Defendant Yarborough:

Rob Cary, Esquire
John Williams, Esquire
Cadence Mertz, Esquire
Jennifer Sasso, Esquire

Washington, D.C.

On behalf of Defendant Catlett:

Lauckland Nicholas, Esquire
Washington, D.C.

On behalf of Defendant Overton:

Michal Antalics, Esquire
Washington, D.C.

On behalf of Defendant Turner:

Jenifier Wicks, Esquire
Public Defender Service
Washington, D.C.

* * *

[433] MELVIN MONTGOMERY,

having been called as witness for and on behalf of the Defendant, and, having been first duly sworn by the Deputy Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SALZMAN:

[434] Q. Can you state your full name, please?

A. Melvin Montgomery.

Q. Mr. Montgomery, how old are you?

A. 45.

Q. And you are currently in custody; is that correct?

A. Yes, sir.

Q. And what – what sentence are you serving right now?

A. Distribution of heroin.

Q. And do you recall what the day of the conviction was, the date of the conviction?

A. 2005.

Q. Okay. And what sentence did you receive?

A. Ninety-eight months.

Q. And do you know when you're expected to be released on that sentence?

A. November.

Q. November of 2012?

A. Yeah.

* * *

[481] CROSS EXAMINATION

BY MR. SWEENEY:

Q. Mr. Montgomery, my name is James Sweeney and I'm representing the United States. Have you and I ever met?

A. No.

Q. Was your testimony in the grand jury that you saw here earlier, was that truthful?

[482] A. Yes, sir.

Q. Was your testimony at the trial truthful?

A. Yes, sir.

MR. SWEENEY: Thank you.

THE COURT: Anything further?

* * *

[485] THE COURT: Anything further?

I just have one question.

As you sit here today in 2012, many years later, how certain are you that you saw Clifton Yarborough that afternoon in the park?

THE WITNESS: I'm certain I seen Clifton Yarborough. He wasn't in the park. He was on the side of H street coming toward government Street because it was a fight. And I was trying to tell him to go ahead on because somebody was going to call the police. It had to be [486] after – I know it was after 3:00.

THE COURT: Okay. Any questions in light of mine?

MR. CARY: No, Your Honor.

* * *

[1371] SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

Criminal Action Numbers

1984 FEL 8612
1984 FEL 8616
1984 FEL 8614
1984 FEL 8615
1984 FEL 8617
1984 FEL 8513
1984 FEL 8613

UNITED STATES OF AMERICA

versus

CHRISTOPHER TURNER
KEVIN SMITH
LEVI ROUSE
CLIFTON YARBOROUGH
TIMOTHY CATLETT
CHARLES TURNER
RUSSELL OVERTON

Codefendants.

Washington, D.C.
Wednesday, May 2, 2012

The above-entitled action came on for a motion before the Honorable FREDERICK WEISBERG, Associate Judge, in courtroom number 202.

THIS TRANSCRIPT REPRESENTS THE PRODUCE OF AN OFFICIAL REPORTER, ENGAGED

BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Government:

JAMES SWEENEY, ESQUIRE, Esquire
KACIE WESTON, Esquire
COLLEEN KENNEDY, Esquire
Assistant United States Attorney

APPEARANCES CONTINUED ON NEXT PAGE

Barbara DeVico
Official Court Reporter (202) 879-1484

[1372] On behalf of Defendant Turner:

BARRY POLLACK, ESQ.
Washington, D.C.

On behalf of Defendant Smith:

DONALD SALZMAN, Esquire
Washington, D.C.

On behalf of Defendant Rouse:

VERONICE HOLT, Esquire
Washington, D.C.

On behalf of Defendant Yarborough:

ROB CARY, Esquire
JOHN WILLIAMS, Esquire
CADENCE MERTZ, Esquire
JENNIFER SASSO, Esquire
Washington, D.C.

On behalf of Defendant Catlett:

LAUCKLAND NICHOLAS, Esquire
Washington, D.C.

On behalf of Defendant Overton:

MICHAL ANTALICS, Esquire
Washington, D.C.

On behalf of Defendant Turner:

JENIFER WICKS, Esquire
Public Defender Service
Washington, D.C.

[TESTIMONY OF JERRY GOREN]

* * *

[1573] THE COURT: Before you turn to Bennett – and again, I'm not sure my command of the facts is sufficient – but was there a problem that you became aware of in trying to track down Carrie Eleby's version of what happened in the car with a witness named Kay Porter?

THE WITNESS: Yes.

THE COURT: What did you know about that?

THE WITNESS: What I knew? Well, when I first got the case, I knew nothing about it. Kay Porter came down with Carrie Eleby – again, according to the files – came down with Carrie Eleby to homicide.

The police, apparently Detective Gossage, McGinnis, Sanchez Serrano began interviewing the two of them together. And Kay Eleby, again, according to the report, agreed with –

BY MS. WESTON:

Q. If I can stop you, I think you said "Kay Eleby."

A. I mean Kay Porter, I'm sorry, agreed with Carrie Eleby's version of the statement.

[1574] As I remember it, the Detective Sanchez Serrano took her out of the room as this began, but she continued to confirm that. So I only know that from reading through the report.

But we did – as I said, I talked to Ms. Eleby and Ms. Porter after that, and Ms. Porter came back sometime in December and told us that she had not told the truth about hearing the statement in the car but that she had heard several other statements made by Mr. Catlett. And –

Q. I was going to get to this later.

A. Does that answer your question?

THE COURT: It did answer my question. In telling you that she was not really in the car and didn't really hear Calvin Alston make admissions in the car, did she tell you that Carrie Eleby had asked her to say that she was there?

Do you remember that?

THE WITNESS: I don't remember what she said to me. There's something in the – in the file that suggests that, yes.

THE COURT: You don't have a recollection?

THE WITNESS: I don't remember what she said specifically.

THE COURT: So you don't remember confronting

[1575] Carrie Eleby about that. Did you ever tell Kay Porter about that?

THE WITNESS: I don't remember. I know we did, and the records seem to say that Carrie said that Ms. Porter was not in the car, and she named a number of other people who were.

I don't remember when we first talked to – when the police first talked to Ms. Eleby whether they got the names of other people who were in the car. But I know I did. And that was when I proceeded to try to corroborate that by talking to every single one of them.

BY MS. WESTON:

Q. Let's fill out the rest of the Kay Porter issue.

Did you disclose to the defense the fact that Kay Porter had initially lied about being in the car and that Carrie Eleby had told her to say she was in the car?

A. No, I did not.

Q. Do you know why you didn't?

A. I don't have a memory of making a decision not to.

MR. FEDER: I'm going to object. Why he didn't is irrelevant. His state of mind, his intent, his good faith, his bad faith is irrelevant to the legal issue. The question is was it turned over, and then what the other evidence was.

[1576] THE COURT: Overruled.

THE WITNESS: I don't have a memory of making a decision not to do it. Ms. Porter came in in November to talk to the police and in December to talk to me. She didn't go into the grand jury until sometime in August, I think August 23rd, some nine months later.

And I suspect that – and she was testifying in the grand jury about statements made by Mr. Catlett, not statements made by Mr. Alston – and I think what I did was I disassociated these two events in my mind and just didn't think of them as being part of the same thing and failed to put it into the grand jury that at

some point before this, she had come down and not told us the truth, which is what I would normally do.

BY MS. WESTON:

Q. Unless the Court has further questions, I'm going to go back to Mr. Bennett now.

THE COURT: No.

* * *

[1622] SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CRIMINAL DIVISION

Criminal Action Numbers

1984 FEL 8612
1984 FEL 8616
1984 FEL 8614
1984 FEL 8615
1984 FEL 8617
1984 FEL 8513
1984 FEL 8613

UNITED STATES OF AMERICA

versus

CHRISTOPHER TURNER
KEVIN SMITH
LEVI ROUSE
CLIFTON YARBOROUGH
TIMOTHY CATLETT
CHARLES TURNER
RUSSELL OVERTON

Defendants.

Washington, D.C.
Thursday, May 3, 2012

The above-entitled action came on for a post-conviction hearing, before the Honorable FREDERICK H. WEISBERG, Associate Judge, in courtroom number 202, commencing at approximately 9:30 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

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[1623] APPEARANCES CONTINUED:

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* * *

[TESTIMONY OF JERRY GOREN]

[1637] Q. Now, during your interview of hundreds of witnesses in this case, at any point during those interviews did you learn information that indicated that [1638] one individual may have committed Mrs. Fuller's homicide as opposed to a group of individuals?

A. No. Well, there was one and that is Ammie Davis at some point, yes.

Q. And I want to turn to Ammie Davis.

A. Okay.

Q. Just initially, what memory do you have of Ammie Davis as a person, if any?

A. As a person?

Q. What – do you have a physical picture of her in your mind?

A. I don't have – I do have a physical picture of her. I remember her, I think I remember her in my office stand – pacing back and forth in my office.

Q. When did you first learn about Ammie Davis?

A. Sometime in August of 1985, early August.

Q. And how was it that you initially learned about Ms. Davis?

A. One of the detectives, I think it was Pat McGuinness, came into my office with a police report that he said he'd just received from a Lieutenant Platt (ph), and I remember Pat coming in and, with the report. I only know it's Lieutenant Platt because I recently read that in – or since then read that in one of the documents that I produced.

[1639] MS. WESTON: And if we could see JX021-004.

BY MS. WESTON:

Q. Directing your attention to the bottom, second-to-last – yes, second and third to last entries on that page, do you see whose name is indicated – I'm sorry, there's actually three – whose name is indicated in those entries?

A. Yes.

Q. Who is that?

A. Ammie Louise Davis.

Q. And directing your attention over to the far right side of that page, do you see a note regarding Lieutenant Platt?

A. Yes.

Q. What is that?

A. It says "lost in the shuffle by homicide Lieutenant Platt's desk, later shot by James Blue."

Q. What is that document?

A. When I left the U.S. Attorney's Office in 1986 and returned to California, I had intended to write, not necessarily about the case but to write as a result of having experienced – the experiences I had in this case. And one of the things I did, I vaguely remember this, but I know I produced this document by going through some of my interview files and trying to chronically – [1640] chronologically list them, alphabetically list them as a way of beginning the writing process.

So this was – this chart, I believe, was made after I had left the office in the context of that.

Q. And other than having read it in this document, do you personally have a memory of Lieutenant Platt or his connection with this statement?

A. I don't have a memory of Lieutenant Platt by name, but I do know that when this – when the police report was brought to me by Pat McGuinness, that he had just been handed that by someone. I didn't the name – I didn't recall the name until now. And that it had been lost on his desk.

Q. What did you do upon – well, first of all, what was it that was brought to you?

A. It was a, I think a three-page handwritten police report by Lieutenant Loney, memorializing his conversation that he had with Ammie Davis in October of 1984.

MS. WESTON: And if we could switch to JX020, please.

THE COURT: What was that exhibit, please?

MS. WESTON: The last one?

THE COURT: Yeah.

MS. WESTON: The last one was JX021-004. And [1641] this one is JX020.

BY MS. WESTON:

Q. Is this the statement of Frank Loney, Lieutenant Frank Loney that was brought to you by Pat McGuinness?

A. Yes.

Q. Did you review that statement when it was brought to you?

A. Again, I have no specific memory of it, but I know I did, yes.

Q. And what did you do after reading that statement?

A. At some point we, again, I don't remember specifically doing it but I know I directed the officers in the case to locate Ammie Davis and bring her to my office so that I could interview her myself.

Q. And going back to JX021-004, do you remember the dates that Ammie Davis came into your office?

A. I think it was August 8 and 9. And I only know that from this document.

Q. And so you met with Ms. Davis on two occasions; is that correct, according to the record?

A. According to this, yes. I have no reason to doubt that that's not true. I don't remember specifically two meetings, but I do remember her in my office and I did write that, so I'm sure that's accurate.

[1642] Q. Do you remember any specifics of the conversation you had with Ms. Davis?

A. I don't.

Q. Do you have a recollection of what the substance of the meeting was about?

A. Yes.

Q. And what was that?

A. Well, I wanted to know what it is she said she saw and heard.

Q. And how were those questions presented to her, if you remember?

A. I don't remember.

Q. Did you confront her with Lieutenant Loney's statement?

A. I don't remember. I'm sure I did.

Q. Did you ask her for additional details beyond what was in Lieutenant Loney's statement?

A. I'm sure I did. The one memory I have is that there were no further details. She couldn't go beyond what she said in her statement. She couldn't tell me any other details. She couldn't provide me with any information about who the girlfriend that she said she

was with when this happened that would allow me to identify her.

The only thing that she did say, and I don't [1643] remember this, but I know it because of some other documents that I saw, apparently we came away from that meeting knowing that her girlfriend's nickname was "Shorty."

Q. Did you make any efforts to locate Shorty?

A. I know that we did because there is a witness summary of a woman who was not the Shorty that she mentioned but there's a description in there that we were looking for Shorty and we interviewed her because we thought she might be the Shorty that Ms. Davis had mentioned. I think her name was Lorraine Donaldson.

Q. And do you have any recollection of whether Ms. Donaldson knew anything about the murder of Ms. Fuller?

A. I don't have a recollection, but my, the summary indicates she did not.

Q. Did Ms. Donaldson have any knowledge of who Ammie Davis was?

A. I don't believe so.

Q. Did there come a time when you spoke with Lieutenant Loney about the statement that he took from Ms. Davis?

A. I know I did. Again, I have a picture of Lieutenant Loney standing in the doorway of my office, but I don't remember the conversation.

[1644] Q. What, if anything, do you recall about that meeting?

A. You know, the only thing that I remember is that there was a great deal of tension or a certain amount of tension. Again, I don't recall specifically. I wasn't very happy that no one had paid attention to the report, I think. But I don't really remember the details of it. I just remember that he was not a happy camper at the time.

Q. Did you ever make any efforts to contact James Blue?

A. I have no memory of trying to do that. And there is nothing in the record that indicates I did, but I am certain that I tried to, because I would have.

Q. Now, Mr. Goren, did you turn over the statement of Lieutenant Loney to the defense at the time of trial?

A. No.

Q. Or anytime prior to trial?

A. No.

Q. Was that a deliberate decision?

A. Yes.

MR. NICHOLAS: Objection. Leading. That was a leading question. Objection.

MS. WESTON: The question was, was that a deliberate decision?

THE COURT: Overruled. Yeah, and he answered [1645] but I didn't hear the answer. Yes or no?

THE WITNESS: Yes, it was deliberate.

BY MS. WESTON:

Q. Now, why was it that you made that decision?

MR. POLLACK: And I'm going to object again. Legally, the only thing that's relevant is whether or not he turned it over. His motive for doing so, his good faith, his bad faith, his intent is legally irrelevant.

THE COURT: I'm certainly going to overrule the objection. I'm trying to figure out whether I should characterize it, but it seems to me it is obviously true that if something is, in fact, exculpatory or Brady material in the sense that it's both exculpatory and material, the motive of the prosecutor in not disclosing it is not dispositive. That I understand, but certainly in making a record of what happened in the case, what the prosecutor did and why he did it is an important piece of information.

MR. POLLACK: Well, Your Honor, I would go beyond not dispositive, I would say not relevant.

THE COURT: I heard that. Overruled.

MR. POLLACK: Thank you, Your Honor.

BY MS. WESTON:

Q. What were the reasons that you decided not to disclose Ms. Davis' statement to the defense?

[1646] A. I believed completely and strongly that Ms. Davis had no evidence in this case. And that she was totally incredible.

Q. What were the bases for your decision that she was incredible?

A. Well, there were a number of things. First, she had told two versions to Lieutenant Loney, one that she had seen the murder; and the other that she had just seen him drag Ms. Fuller into the alley. She was unable to provide any other details about what happened, about where it happened.

She was unable to provide us with any information that we could follow up on, including the identification of the person she said that she was with. We were – we followed up as best we could with what we had. We could not find the Shorty. We could not find any other evidence that Mr. Blue was involved in this murder in any way.

And all of this, at the time, in August of 1985, was measured against the fact that I had five codefendants who had made statements that were videotaped about this murder, all of them independent of one another. A fifth, Steve Webb, who had also told two of the officers that, a similar story, which he later retracted. I had five eyewitnesses to the murder, two of those who gave video [1647] statements, Mr. Alston and Mr. Bennett, in addition Ms. Eleby and Ms. Jacobs. Mr. Thomas.

Plus Melvin Montgomery who saw how this gan in the park. I had a number of other witnesses who corroborated statements and admissions of various, of the defendants and corroborated them – they didn't all testify, but corroborated things at trial. I had a scene that matched the description made by these witnesses. I had an autopsy that matched the description of these witnesses.

I also had made a judgment based on talking to Ms. Davis. She was not serious about this. She was very playful and didn't take it seriously. And I found out that she had accused Mr. Blue of a murder nine months before the death of Ms. Fuller, in January of 1984 Mr. Blue was arrested for that. And I found out that he was later released because it was determined that she had made that up.

So this was at least the second time she had tried to claim that he had committed a murder. All of those

things combined led me to believe that there was nothing, there was no truth to this and that she was not a witness in this case. I don't have any memory of discussing this decision with my supervisors, but it is what I would have done and I have no reason to believe [1648] that I didn't do that at the time.

Q. Now, did you at some point learn that Ms. Davis was, in fact, killed by James Blue?

A. I did.

Q. Do you know how you learned that information?

A. One of the officers – well, it was in the paper, for one. But I do remember one of the officers, Detective Sanchez-Serrano actually took her dying declaration at the hospital when she said James Blue killed me, and she died.

Q. Did you have an opportunity to review the homicide file involving the murder of Ms. Davis?

A. Yes.

Q. And during your review of that file, did you see any indications that Ms. Davis was killed because she was a witness or a potential witness against James Blue?

A. No.

Q. Do you have any recollection of the situation in which the murder of Ms. Davis happened?

A. Yes.

Q. What was that?

A. I don't remember this – I don't remember it all from memory, but I do know from having reviewed the file that they were together. There was some argument about drug money – about money for drugs. There

was – there [1649] were a number of witnesses who heard that argument, nobody in that case said anything about any other conversation that they had. Mr. Blue had a gun and shot her in the head.

He later, I think, pled guilty and claimed – don't know, I'm not sure if he pled guilty or pleaded, but he claimed that it was an accident.

Q. Did you ever put Ms. Davis in protective custody or put her in a hotel or anything because of concern for her safety in this case?

A. No.

Q. Do you know whether any detectives or other police officers in Ms. Fuller's case put Ms. Davis into protective custody?

A. Not Ms. Fuller's case, no.

Q. Did there come a time where you learned that Ms. Davis had been put into protective custody previously?

A. Yes.

Q. How did you learn that?

A. At the May 9th, 10th, witness conference that I had in your office with Mr. Sweeney and a number of the other officers. One of them, I don't remember who, said that there had been an arrangement made to put Ms. Davis into a motel room in the *Heider* case, in the January 1984 case for one night. And that she stayed that one night at [1650] the hotel.

Q. And –

A. Motel.

Q. When you say the Heider case, is that the case that you referred to in which Ms. Davis also accused Mr. Blue of committing the murder?

A. Yes.

Q. Do you recall receiving a discovery letter from Michele Roberts and Corinne Schultz on August, I believe it was 7 – or August 9.

MS. WESTON: If we could see JX026, please.

BY MS. WESTON:

Q. First of all, do you recall receiving a discovery letter from Ms. Roberts and Ms. Schultz?

A. I know I did receive it and I've seen it.

Q. And directing your attention to JX026, does this appear to be the August 9, 1985 discover letter from Ms. Schultz and Ms. Roberts?

A. Yes.

Q. And do you recall receiving that letter at the time or around the time that you were meeting with Ms. Davis?

A. I don't recall, but those are the dates that I did meet with Ms. Davis, and yes.

Q. And despite receiving that letter, you still [1651] chose not to disclose Ms. Davis' statement, correct?

A. Yes.

Q. Did you respond to this discovery letter to your knowledge?

A. I did. There were two discovery letters. There was one, I think, that came a day before, but this is a

supplement to that, and I did respond, I think, on August 20.

MS. WESTON: If we could have JX027, please.

BY MS. WESTON:

Q. And you'll note that this is dated August 20, 1985, and if we could go to the last page, to the signature block. Does this appear to be your signature on this document?

A. It does.

Q. And does this appear to be the response to Ms. Schultz and Ms. Roberts' discovery letters?

A. Yes.

Q. And do you recall whether or not you included in this letter any indication that you were not going to turn over certain materials?

A. I believe I did say I was not going to turn over certain materials.

Q. Okay. And if we could go back to, I believe, the first page. As an initial matter, was this your [1652] standard practice as a way to respond to discovery requests from counsel?

A. Yes.

Q. And included in this, if you could just scan through it and let us know if you need to change pages to see where you believe you were referring to, notifying them that there was certain information you were not going to disclose?

A. I'm sorry, you want me to look for what?

Q. If you could just look through it and then if you need us to change the page.

A. Do you want me to note where I said I'm not?

Q. Yes.

A. Well, the very first paragraph I say, of course some of what you're requesting is beyond what I believe – or the Brady doctrine.

THE COURT: Slowly, please.

THE WITNESS: Sorry, Your Honor.

THE COURT: Do you want to repeat that slowly, please.

THE WITNESS: Of course some of what you're requesting is beyond what I believe I'm obligated to do under either Rule 16 or the Brady doctrine.

BY MS. WESTON:

Q. Now, if we could go – if we could scroll [1653] through to, I believe it's page – next page. Next page, please. Directing your attention to the top paragraph here, what is it that you're referring to there?

A. I'm providing, as I was required to do, the names of witnesses who were potentially alibi witnesses for, in this case Mr. Harris. And I believe I did that for all of the defendants.

* * *

[1656] Q. Are you aware of a gentleman by the name of James McMillan?

A. Yes.

[1657] Q. Do you have any recollection of when James McMillan became part of the investigation of this case?

A. I don't know exactly when. In late November, early December, when I first got the case, there were

references to having seen two people running through the alley at the time that the police arrived. At some point we identified who those two people were, James McMillan and Gerald Merkerson. I don't remember exactly when I became aware of their names.

Q. Was Mr. McMillan part of the photo book that was shown to witnesses?

A. Yes.

MS. WESTON: If we could have JX133, please.

BY MS. WESTON:

Q. If you could just scan that document and tell us when you see James McMillan's name?

A. It's No. 11.

Q. Is there any rationale or significance to the order in which the individuals are named on this list?

A. This list is the way in which these photographs appeared in a red book that we put the photographs in. Initially, there was no book and they were shown loosely. But, again, in some order, I believe. I don't remember when the book began to be used, but generally the order is chronological by when we identified somebody who we [1658] thought the picture should be in the book.

Q. Now, was there another – I think we talked yesterday about the fact that there's other versions of this list, correct?

A. There are others, yes.

Q. And are there any versions of this list that give you a sense of timing as to when Mr. McMillan, at the latest, was part of the case?

A. Well, there's one of them that has a date on it, I think it's January 14 at the top.

MS. WESTON: And if we could page down. Joint Exhibit 133-010.

BY MS. WESTON:

Q. Is this the document that you referred to as being dated?

A. Yes.

Q. And is that date January 14, 1985?

A. Yes.

Q. And what is the significance of this list?

A. Well, this was a list that was being – that documents, the photos that were being shown to witnesses at that time.

Q. And is Mr. McMillan on that list?

A. No. 11. And Mr. Murchison, too, I believe, No. 16.

[1659] Q. Did you make efforts –

THE COURT: So the significance to you is that at least you had his name by January 14, that's all you can say from that?

THE WITNESS: From this, I believe that there is a record in one of the detective's notebooks that he was in a list of – he was in photographs that were being shown to somebody as of, earlier in January, January 2nd or 3rd or 4th, some date like that.

BY MS. WESTON:

Q. Did you make efforts to speak to Mr. McMillan?

A. I did.

Q. Did you consider him a suspect in the homicide of Ms. Fuller?

A. I considered him as a potential witness or suspect, yes.

Q. Why was that?

A. I suspected everybody, I think, in some ways. Initially, well, again, going back to the way in which I proceeded in investigating this case, I tried to talk to anybody and everybody who might have any information about the case. Mr. McMillan, Mr. Merkerson were identified as – in two ways, one, running through the alley after the, after the murder had taken place; and going back yesterday to when I described going to the jail to [1660] interview Mr. Alston, the reason I went there was someone had – one of the detectives, Tom Johnson, had indicated he wondered whether, instead of Darryl Murchison it was Gerald Merkerson who was involved in this murder and that was the rationale for me going back to Mr. Alston to see if I could verify his identification of Darryl Murchison.

So Merkerson's name was a name that I was aware of. I was informed, I believe, that he ran with these guys, whatever that might have meant. So I was interested in talking to him.

Q. Do you have any recollection of actually speaking to him?

A. I have no recollection of speaking to Mr. McMillan. There are two notations in the witness summaries that I put together. One specifically about Mr. McMillan in which I believe I indicated that he wouldn't talk to us, his lawyer said he wouldn't talk to us. Another – and there is no other reference in the

record that clearly shows I did talk to him, but in a note that I wrote to one of the police officers and what I referred to as a master list, a list of things I asked the police to do sometime in June when I was on vacation, there is a note asking one or two of the officers something about Gerald Merkerson being brought back to see whether he says anything relative to what McMillan told [1661] us. It's an indication that I at some point talked to Mr. McMillan, but I have no memory beyond that.

Q. Do you have any memory of talking to Mr. Merkerson?

A. No. Although, again, the record seems to indicate that I did.

Q. Now, did you have any witnesses that you'd spoke to as part of your investigation that specifically said Mr. McMillan was not present?

A. Mr. Bennett in his videotaped statement, I believe, said, I know Mr. McMillan and he was not there.

Q. Did you have other witnesses who said, in fact, that Mr. McMillan was present?

A. The only person who said Mr. McMillan was present was James Campbell in his videotaped statement. He said Mr. McMillan was there and participated in the beating, not alone but with the others.

Q. During your investigation, did you also learn information about the circumstances of Mr. McMillan and Mr. Merkerson's presence in the alley or describing their time in the alley?

A. There were a number of witnesses who described two people running through the alley, yes.

Q. And who were those individuals?

A. Mr. Freeman who was the vendor who found [1662] Ms. Fuller's body in the garage. A woman by the name of Jackie Tylie who was a passerby who lived near there who came into the alley with some other people at about the time the police arrived. A young woman – well, it's not young anymore, Charnita Speed who was with the vendor, I believe, and knew Mr. McMillan and Mr. Merkerson.

There were three other witnesses, Mr. Eddie Davis, who was with Mr. Juan Wigfall and a young – a man by the name of Clayton Coleman, all of whom had come into the alley having heard that a body was found there. And all of them, now, Mr. Wigfall said he didn't see anybody, I think, running, but the others did make statements or testify at trial about two people, Mr. McMillan and Mr. Merkerson, present in th iley at about the time the police arrived.

Q. And do you know what time the police arrived on the scene?

A. According to the radio run, it was 6:16 in the evening.

Q. You mentioned Clayton Coleman. Do you recall whether Mr. Coleman testified in the grand jury about what he saw in the alley?

A. He did.

MS. WESTON: If I could get JX176-007.

BY MS. WESTON:

[1663] Q. Looking at line 4, beginning line 4:

"Question: So when you entered the alley, who did you see there beside" –

MS. WICKS: Your Honor, I would object. The same objection as yesterday.

MS. WESTON: This is a joint exhibit, Your Honor.

THE COURT: It's actually admitted as a joint exhibit.

MS. WICKS: Okay, I apologize. I wasn't sure if it was – okay. I understand.

BY MS. WESTON:

Q. For the record, this is Joint Exhibit 176, page 7. Beginning again at line 4:

"So when you entered the alley, did you see there – who did you see there besides the police? "Answer: Seen Russell's sister.

"Question: What is her name?

"Answer: Jackie. I think that's her name. That's her name, Jackie? I'm not too sure about her name.

"Question: But you're sure it was Russell's sister?

"Answer: Yeah.

"Question: And you think her name is Jackie?

"Answer: Yeah, because she got all these kind [1664] of nicknames anyway, so I'm not sure what's her name.

"Question: Did you see anybody else there?

"Answer: Yes, and this man who be on the street selling some drugs.

"Question: Did you see anyone else?

"Answer: Just before, I mean, when we got in the alley these two boys, they ran past us and they was

coming from 9th and H direction, coming from that direction.

"Question: Where did they run?

"Answer: They run towards I and 8th Street.

"Question: So they didn't run toward the end of the alley where the police were coming from?

"Answer: No.

"Question: They ran out toward I Street?

"Answer: Yeah.

"Question: So that means they ran around in front of the garage?

"Answer: Yeah.

"Question: Did you see them stop to talk to anybody?

"Answer: Well, they said a couple of words to Russell's sister and then they ran off.

"Question: Did you see whether they were carrying anything?

[1665] "Answer: No.

"Question: Did you get a good look at them?

"Answer: Yes.

"Question: Did you know them?

"Answer: I know them by face, one by face.

"Question: What do you know about him?

"Answer: I see him all the time. He be hanging around on 8th and H corner.

"Question: You don't know his name?

"Answer: No, I don't know his name."

To your recollection, do you know what the timing was of when Mr. Coleman and the other individuals he was with at the time entered the alley?

A. Well, it was around 6:16. They entered the alley as the police were coming in from the other side, so the radio run again says that Officer Ball arrived at 6:16.

Q. Do you recall whether any counsel at the time of trial requested disclosure of the names of the men that were seen running in the alley?

A. Yes, Michele Roberts did.

MS. WESTON: If we could go to JX001.

THE WITNESS: She actually requested the names in her discovery – her first discovery letter in September, I believe.

[1666] BY MS. WESTON:

Q. And did you disclose those –

A. Or in August.

Q. Did you disclose those names in response to that discovery letter?

A. No, and she documented the fact that I did not disclose it in that earlier letter, as I recall.

Q. And did she then raise it again at the time of trial?

A. Yes.

MS. WESTON: And if we could go to – I'm sorry, dash 02323.

BY MS. WESTON:

Q. I believe beginning at line 7.

"Ms. Roberts: Your Honor, this is an unrelated matter. There's going to be an objection. We might as well hear it now. I intended to ask this witness about his having attended a lineup on the 18th of October. My client stood in. This witness identified someone other than my client."

THE COURT: Can you slow down? I need some context. I don't know who this witness is.

MS. WESTON: I'm sorry. I believe this is referring to Mr. Freeman.

THE COURT: Okay.

[1667] BY MS. WESTON:

Q. At line 11: "This witness identified someone other than my client. Mr. Goren indicated that he would object. It's beyond the scope. If that's beyond the scope.

"The Court: It is beyond the case, Ms. Roberts.

"Mr. Goren: Yes.

"Ms. Roberts: I will call him in my case.

"The Court: Wait a minute. Just one at a time, Ms. Van Susteren."

And then it goes on to another issue.

Do you recall whether Judge Scott ever ordered the disclosure of the names of Mr. McMillan or

Mr. Merkerson?

A. He did not.

Q. Do you recall whether or not Ms. Roberts ever raised the issue in her case?

A. There's –

THE COURT: I'm sorry. I'm getting a little lost here. Why is this a reference to McMillan? Is that the person that Freeman identified?

MS. WESTON: Yes, and I'm sorry, I was going to come back to that.

BY MS. WESTON:

Q. If you have an answer to the Court's question.

[1668] A. Mr. Freeman, this was, again, before I got involved in the case, I believe, Mr. Freeman was asked to come to a lineup to see if he could identify the people who were running through the alley. I don't recall who was in that lineup other than Mr. Harris and I think the point – at that point Mr. Harris was the only person arrested and there was an interest on the part of the police to see whether or not he was one of those two people.

I don't recall whether Mr. Merkerson or Mr. McMillan were either identified at that time or in that lineup. I haven't seen a lineup picture either, so . . .

Q. Do you recall whether Mr. Freeman identified Mr. McMillan or Mr. Merkerson after the night of the offense?

A. After the – he – at some point, he did, I think, from photographs. And there were other identifications. And I know that there's at least other reference in this transcript somewhere beyond that in which Ms. Roberts again says that I will call Mr. Freeman as my own witness. And there's conversation – discussion about the identification of the two people who were running in the alley beyond this.

Q. And we'll get to that citation. I don't have [1669] that right now, but we will find that citation. During that conversation, if you recall, was there a point

where you were asked specifically on the record at trial to disclose the names of the two men in the alley?

A. I believe I was and I believe I said I didn't think it was Brady and I wouldn't do it.

Q. And do you recall what the reason – what your basis was, on the record, for why you were not going to disclose those names?

A. Yes.

Q. What was it?

A. Just to give some context to it, it was the policy of the office at the time to disclose under Brady and under all rules, whatever we were obligated to, if we weren't obligated, we weren't doing it. I didn't feel that this was Brady because these two gentlemen had come into the alley at, sometime after the murder, at least 15 minutes after the murder. Mrs. – Ms. Fuller's body was discovered at six o'clock.

Two or three times people had gone back into the alley after the discovery and there was nobody there. It was clear that Mr. Merkerson and Mr. McMillan had not entered the alley for at least that 16-minute period. Ms. Fuller was killed before six o'clock. We didn't know when. I think I made the argument at trial that it was as [1670] much as an hour and-a-half before the police arrived.

Q. What was the basis for that position?

A. The estimates of – it was a combination of things, the estimates of the time of death by the medical examiner and the information we had about when Ms. Fuller left her house. The other thing that we knew was that there were some people who had walked through the alley, again, according to the witness summaries that I had, about 5:30 and said

that they heard some kind of moans coming from the garage. They did not look or inquire. So that's 30 minutes before the body was found.

So my argument then, was that Mr. McMillan had not – and Mr. Merkerson had not come through the alley around the time of the murder, it was well after the murder. There's testimony at trial that they did not – well, Mr. Coleman in his statement says that they came in after Mr. Coleman did and ran past them. They immediately fled when they saw the police.

They did not look in the garage, they did not pay any attention to the garage. They had no connection with the garage. I didn't feel like this was Brady material in any way.

MS. WESTON: I believe we may have found the other transcript citation and if I could get the page number.

[1671] MR. SWEENEY: I don't have it on this, but I'm just going to calculate from the actual page numbers.

MS. WESTON: Okay.

BY MS. WESTON:

Q. While we're trying to find that, do you recall if at any point the Court ordered you to disclose the identities of the individuals?

A. No. My memory is that because Ms. Roberts said – well, I'm just going to call this witness on my own case, he postponed making – Judge Scott postponed making any ruling on that.

Q. Had you disclosed prior to trial the fact that two men were running from the alley at the time of the offense?

A. Yes.

Q. Or shortly thereafter?

A. Yes. Ms. Harris – Ms. Roberts knew it at the discovery conference we had in August. There's some statement about that in her letter to me confirming what I told her.

THE COURT: You said in the course of your response, I think you said two witnesses or at least two witnesses had been in the alley and no one was there.

THE WITNESS: Right.

THE COURT: What was that a reference to?

[1672] THE WITNESS: Mr. Freeman who was working with a vendor on the corner of 8th and H, went back into the alley at six o'clock to go to the bathroom, he – I don't know whether he opened the door or the door was opened. He opened the garage door and, to urinate in the garage. That's when he saw her body. It was at six o'clock, he said. He came out, there was no one present at the time.

He came out of the alley and – and, again, I only know this from having reviewed the records, but he came out of the alley and went back to the vendor, Mr. Robinson, and told him what he found. Mr. Robinson and Ms. Tylie, Jackie Tylie went back into the alley to look at the body at that point.

Mr. Freeman stayed at the vendor stand. Mr. Robinson and Ms. Tylie saw the body and no one else. They came out and Mr. Robinson asked Ms. Tylie to go call the police. She had called the police, I think the police call came in at about 6:07, if my memory is correct. And it's my memory of the records, not my memory of the time.

They waited for the police and at about 6:15 they entered the alley, or 6:16, according to the police radio run. I don't remember when the police radio run went out but Stephen Ball, the officer who arrived said that she arrived at 6:16, and it was at that point that Officer Ball, Mr. Freeman, Ms. Tylie were coming into the [1673] alley from, I believe, the 8th Street side.

Mr. Davis, Mr. Wigfall, Mr. Coleman, I think Charnita Speed were coming in from the 9th Street side and it was at that point that, according to Mr. Coleman, two people ran past them from 9th Street into the alley toward the garage when they saw the police. They ran up the alley, there was a cut in the alley that goes north, I guess, toward I Street.

So does that explain it?

THE COURT: Yes, sir.

BY MS. WESTON:

Q. Do you have any knowledge of where Mr. McMillan lived?

A. He lived off that alley. I think he lived on 8th Street off that alley. when I said they ran up the cut toward I Street, it was somewhere in that direction. I don't remember the address.

Q. I'm told that we now have the citation to the transcript. Looking at what appears to be JX001-02324 –

MS. WESTON: Brief indulgence, as I find the line –

BY MS. WESTON:

Q. Okay. Line 11. Again, this is referring to Mr. Freeman.

"Ms. Roberts: Well, to the extent that – let [1674] me say this: Mr. Goren did concede that Mr. Freeman's identity was Brady when we asked for his identity. We got it. I'm now suggesting that to the extent that other persons were identified by Mr. Freeman as being the persons he saw running out of the alley, that's also Brady, and I'm asking Mr. Goren, of course, through the Court, whether or not he intends to turn over the names and identities of the persons that were identified by this witness as the men he saw leaving the alley and that he clearly doesn't identify my client as being the man. That's something I'll bring in my case.

"Mr. Goren: I said this to Ms. Roberts. I don't know if I said it to anyone else, but I know I said it to Ms. Roberts because of this lineup issue. I did not consider his identification to be Brady. In fact, the people he was talking about were people who were in the alley an hour and-a-half or so after Ms. Fuller was killed. They were coming from 9th Street. They never went in the garage. They never had any association with the garage. They ran when the police came into the alley for whatever reasons, no one will ever know.

It didn't seem to me that that was Brady in any way. In fact, nor was the identification procedures that may or may not have been used with Mr. Freeman to find out who they were, of the names of any people that he might [1675] have identified in photographs.

"The Court: Do we have to take that up at this moment?

"Ms. Roberts: Not if we're not going to.

"The Court: Because this jury –

"Ms. Roberts: That's fine, since the Court has ruled it's beyond the scope I'll call him in my case.

"The Court: All right.

"Ms. Roberts: I don't mind tabling the issue until then.

"The Court: All right. Thank you. Anybody else?"

To your recollection, did Ms. Roberts ever raise the issue in her case?

A. No, I just noted that Mr. Alston also joined in that motion and he never raised it either.

THE COURT: I'm sorry. I'm still a little bit confused. I hate to be persistent, but I don't know from anything you've read that the – I don't know today that the persons or person or persons Mr. Freeman identified is McMillan, and he doesn't remember whether McMillan was in the lineup where he did not pick Mr. Harris. So how do we know this whole discussion pertains to McMillan?

MS. WESTON: I think what it pertains to, Your Honor, is the disclosure of the identities of the people [1676] that were identified in the alley. And there's been clear testimony from Mr. Goren that multiple individuals identified McMillan and Merkerson as the two individuals running from the alley.

THE COURT: So the fact that she ties it to Freeman doesn't really matter because those people do exist?

MS. WESTON: Correct. There are people. She's clearly asking for the identities and we knew the identities through various witnesses.

THE COURT: That's a fair point. Okay.

BY MS. WESTON:

Q. You've indicated as part of your timeline basis for your argument before the Court some other individuals that were walking through the alley and heard a moan. Who were those individuals, if you recall?

A. There were four people who we interviewed, who said that they were in the alley sometime – the time is a little hard to pin down but about 5:30 or 5:45, according to the witness summary notes that I've reviewed. They were a man by the name of Willie Luchie, Ronald Murphy, Jackie Watts and I think a man by the name of Samuel Edwards.

They were – either had been drinking or were on their way to a liquor store to get some alcohol to take [1677] back and drink back at their – at the Watts' house, I believe. And we interviewed all of them. I believe two of them indicated that they actually heard some kind of moan as they walked through that alley. A couple of them did not. They did not look in the garage or inquire in any way.

Q. Did any of them indicate whether there was other individuals in the alley at the time they were walking through and heard that?

A. I believe they said there was nobody else in the alley at the time.

MS. WESTON: Brief indulgence.

THE COURT: We're going to take a break at some point. Is this a good time?

MS. WESTON: That's fine.

THE COURT: All right. we'll take ten minutes, please.

(Court in recess from 10:49 a.m. until 11:05 a.m.)

THE DEPUTY CLERK: Court is again in session. Please be seated and come to order.

BY MS. WESTON:

Q. Mr. Goren, one last question with regard to – actually, I want to clarify one thing. I believe that you testified previously that Mr. Davis, Mr. Coleman and [1678] Mr. Wigfall testified at trial. Is it your understanding that they testified at trial or in the grand jury?

A. No, in the grand jury. They were announced as potential witnesses, I think, at trial, but I don't recall whether they testified.

Q. If any witnesses had identified Mr. McMillan's photo from the photo book that was shown, what would you have done with that information?

A. Identify –

MR. POLLACK: Objection. Hypothetical and speculative.

THE COURT: Could you ask your question again, please?

BY MS. WESTON:

Q. Was Mr. McMillan's photo in the book?

A. Yes.

Q. If witnesses had identified him, what would you have done with that information?

MR. POLLACK: I object because it's speculative.

THE COURT: I'll permit the question.

THE WITNESS: Identified him as a participant in the murder.

BY MS. WESTON:

Q. Would you have charged him in this case?

A. Absolutely.

* * *

[1682] Q. Mr. Goren, are you familiar with the witness by the name of Maurice Thomas?

[1683] A. Yes.

Q. Are you familiar with a statement that he made indicating he went home after witnessing part of the events of October 1, 1984 and told his Aunt Barbara what he had seen?

A. Yes.

Q. And are you aware – did you ever attempt to talk to Aunt Barbara?

A. I believe I did. There's a witness summary of – actually, I don't know if there's a witness summary of – her name is Barbara Harris – but there's a notation in the witness summary about Maurice Thomas that indicates I did talk to Barbara Harris.

Q. And would that witness summary refresh your recollection as to the specifics of what went on with the conversation with Ms. Harris?

A. Yes.

MS. WESTON: If I could have JX002-062. And if we could just enlarge the block of writing.

BY MS. WESTON:

Q. Is this the witness summary note that you referred to relating to Maurice Thomas?

A. Yes.

Q. And as you look at this, directing your attention to the last paragraph above the line, beginning [1684] with, "Maurice says that shortly after he got home he went to the store to buy Aunt Barbara a soda. At the corner he saw" – oh I'm sorry, I'm in the wrong paragraph.

Going up one paragraph. Beginning with "all he told Barbara was someone was getting beat up in the alley. She told him to forget it and not talk to anyone about it. He never did. Barbara, whose real name is Dorothy Jean Harris, and who he had talked to before, does not recall Maurice ever telling her anything such as this. She is a bit of an alcoholic who is presently in a treatment program but Maurice says that she did not appear drunk to him."

Does that refresh your recollection as to a conversation you had with Ms. Harris?

A. Well, I still don't remember the conversation with Ms. Harris. I mean, that's, I assume, an accurate description of what that conversation resulted in.

THE COURT: Well, just in terms of your methodology in making these notes, what this sentence says that Ms. Weston just read to you is, Barbara, whose real name is Dorothy Jean Harris and who we had talked to before does not recall Maurice ever telling her anything such as this. Does the "we" necessarily include Jerry Goren when you use it in that form in that kind of a note?

THE WITNESS: Yes.

[1685] THE COURT: In other words, if you were referring to the fact that the detectives talked to you –

THE WITNESS: I would have said detectives. And I also would have, if she had said he did not say this to

me, I would have put that down. I mean, I think what this says is that she didn't remember.

BY MS. WESTON:

Q. Do you have any recollection of her ever saying that conversation did not happen?

A. No.

Q. Do you recall whether you provided the address of Ms. Harris and Mr. Thomas to defense counsel?

A. There was a lot of discussion at trial about Ms. Harris and her location, her address, all of her identifying information was available at trial and there was conversation about that on the record.

Q. In this same note, there appears to be a footnote discussing two different Maurices.

A. Right.

Q. I want to direct your attention to the starred section below the line, which reads: "We also finally found the girl who told us about the Maurice who knew about the murder and let her see Maurice Thomas. She said that he was not the right Maurice. She led us to Maurice Murray, a second, slightly effeminate 14-year-old Maurice. [1686] He turned out to know very little about this but made for great jokes about stereo gay Maurices, one at each end of the alley."

Did you write that?

A. Yes.

Q. And do you recall there being two different Maurices interviewed in connection with this case?

A. I don't recall, but I believe that's an accurate statement of what happened.

Q. And to your recollection, Maurice Thomas, when interviewed, did he have details regarding the murder of Ms. Fuller?

A. Yes.

Q. Did Maurice Murray have details regarding the murder of Ms. Fuller?

A. No.

Q. Did you ever have any question that Maurice Thomas was the individual who had witnessed part of the events?

A. No.

* * *

[1779] Q. Now, at this interview with Eleby and Porter, again, you weren't there but your understanding, Eleby claimed to have been in a car and heard an admission from Calvin Alston, correct?

A. Correct.

Q. And claimed that Kay Porter was in the car with her and also heard that admission, correct?

A. Well, from what I read, the way the conversation went was that she reported this conversation and she would turn to Kay and say, right, Kay? And Kay would agree. At some point fairly quickly in the interview, apparently Detective Sanchez took Kay Porter out and interviewed her separately, but she continued to say, at that point, that she heard the conversation.

Q. And then later in December, Porter comes back in and admits that she had lied when she was in there and claimed to have heard that conversation, correct?

A. That is correct.

Q. And Eleby also admits that Porter, in fact, was not there for the conversation?

A. That is correct.

Q. And then Eleby proceeds to give you a whole bunch of other names of people who were supposedly there for an Alston admission in a car, correct?

[1780] A. She gave us a number of other names, nicknames and full names, of people who were in the car when she overheard the conversation. I don't recall that she could tell us who heard it, but she did give us a number of answers. All of them we attempted to interview.

Q. And then separately, Ms. Porter says, well, I didn't hear the admission by Alston, but I heard an admission by Catlett?

A. Yes.

Q. And both Ms. Eleby and Ms. Porter testified at trial as government witnesses?

A. Yes.

Q. Ms. Eleby testified, amongst other things, of about hearing the admission from Alston, correct?

A. Yes.

Q. And Ms. Porter testified, among other things, hearing the admission from Catlett, correct?

A. Yes.

Q. And you already testified on direct that you did not disclose to the defense that Ms. Porter had previously lied by claiming she had overheard the Alston admission, correct?

A. I did fail to do that.

Q. I took it from that, but I'm not sure if you said explicitly, that you also did not disclose to the [1781] defense that Ms. Eleby had asked her to lie about that and herself lied about.

A. I don't think I disclosed this particular lie either way. We did put on the record that Ms. Eleby had not told us the truth from the beginning and had changed her story over time. I did not do that with Ms. Porter.

Q. Right. But even with Ms. Eleby, while you said that she had changed her own story, you did not disclose to the defense that she had asked another witness to lie?

A. I did not do that.

* * *

[1794] Q. And with Eleby, you got her new version of the Alston admission, that it wasn't Porter that was in the car, it was a number of other people that were in the car, correct?

A. Well, it wasn't a new version of the statement; [1795] she excluded Ms. Porter. I don't recall what she said to the police about who else was in the car when she initially spoke to the police. I don't know whether those names were there or not. I just don't remember. But she did not – she didn't alter the basics of the statement that she heard.

THE COURT: Before Alston pled guilty, did you need or want to get as witnesses some of the people – now that you knew Porter was not in the car, did you want to get some of the people who she said was in the car?

THE WITNESS: We did. As witnesses at the trial?

THE COURT: Yeah.

THE WITNESS: We did find two people, Sharon Harrison and Antoinette Clay (ph) who were in the car and who confirmed that they also heard that statement.

THE COURT: They didn't need to testify after Alston pled guilty, or they did testify?

THE WITNESS: They did not testify after Alston pled guilty. Carrie Eleby, I think, at some point testified about that statement, but it was not in the context of trying to convict Calvin Alston. And I believe that both Antoinette Clay and Sharon Harrison were announced as potential government witnesses, but I'm not sure.

[1796] They may not have been because we would have done that in voir dire after Mr. Alston pled. So I'm not sure about that.

I'm sorry.

BY MR. POLLACK:

Q. No, that's quite all right. I want you to respond to the Court's question. I guess, back to what we were discussing –

THE WITNESS: Let me just say one thing to the judge. I'm sorry.

We also interviewed everybody else who was in that car, and while none of the others said they heard the statement, they confirmed the ride and they confirmed the fact that Carrie was sitting with Mr. Alston in the front seat and that there was a conversation, they didn't hear it.

I'm sorry.

BY MR. POLLACK:

Q. No, no, I appreciate that.

So initially, she said Kay Porter was there. Later she said Kay Porter was not there and she named the following individuals who were in the car. Tell me if this is correct.

A. I don't know if I'll remember all of them.

Q. Jimmy, who was Mathew James Harrison; Smurfette, [1797] Linda Jacobs; somebody named Cee Cee; somebody named Tony; somebody whose nickname was Hitman, who was Darryl Scott; somebody whose nickname was New Balance; Antoinette Gray or Clay and Sharon Harrison; is that correct?

A. Well, that sounds familiar. I don't remember if that's the entire list or not. It sounds right.

Q. So let's look at JX2 at 00054. Let's start in the middle of the highlighted portion. It says, "Meanwhile, Kay was talking with Ruben Sanchez when McGuinness and Gossage came out and told Sanchez what Carrie had said. Sanchez confirmed that Kay, who Carrie indicated was with him in the car, also overheard this conversation. That's the first conversation.

"In late December, when they both came back down to my office, Kay denied being in the car and overhearing this conversation. She said Carrie had said to her something in the car coming down with Gossage and that she had played along with having overheard this conversation. Carrie confirmed that Kay was not in the car and went on to name a number of people including herself and Calvin, Jimmy, Smurfette, Cee Cee, Tony, Hitman, New Balance, Antoinette Gray, Sharon Harrison."

Does that refresh your recollection as to whether she only gave you that list of names on the second occasion

after she conceded and Porter conceded that [1798] Porter had not been in the car?

A. You know, I just don't – I don't know enough about the first conversation to know what names she might have given or not. I know that when we talked more in December these are the names she gave me.

Q. In any event, that would put eight people in that car in addition to Ms. Eleby?

A. That's what it says.

Q. And you interviewed all eight of those people?

A. I did.

Q. And only two of them confirmed the conversation?

A. Yes, only two of them confirmed the conversation.

Q. And this is after you knew that she had already successfully put up somebody else to claim that Alston had made this conversation, that falsely claimed that Alston had –

A. Yes.

THE COURT: Did Calvin Alston ever tell you that he had made the statement in the car?

THE WITNESS: Yes.

BY MR. POLLACK:

Q. And when did Calvin Alston first tell you that?

A. I don't remember. After he pled guilty and agreed to testify, I think.

* * *

[1834] SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CRIMINAL DIVISION

Criminal Action Nos.
1984 FEL 8612
1984 FEL 8616
1984 FEL 8614
1984 FEL 8615
1984 FEL 8617
1984 FEL 8513
1984 FEL 8613

UNITED STATES OF AMERICA,
Plaintiff,

v.

CHRISTOPHER TURNER, KELVIN SMITH,
LEVI ROUSE, CLIFTON YARBOROUGH, TIMOTHY
CATLETT, CHARLES TURNER, RUSSELL OVERTON,
Defendants.

Washington, DC
May 7, 2012

The above-entitled matter came on for motion before the Honorable Frederick Weisberg, Associate Judge, in Courtroom Number 202, commencing at 2:03 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS THE TESTIMONY AND PROCEEDINGS IN THE CASE AS REPORTED.

Kellie M. Humiston, RMR, CRR
Official Court Reporter (202) 879-1026

APPEARANCES:

On behalf of the Government:

MS. KACIE WESTON and MR. JAMES SWEENEY
Washington, DC

On behalf of the Defendant Christopher Turner:

MR. BARRY POLLACK
Washington, DC

On behalf of the Defendant Kelvin Smith:

MR. DONALD SALZMAN
Washington, DC

On behalf of the Defendant Levi Rouse:

MS. VERONICE HOLT
Washington, DC

On behalf of the Defendant Clifton Yarborough:

MR. ROBERT CARY
Washington, DC

On behalf of the Defendant Timothy Catlett:

MR. LAUCKLAND NICHOLAS
Washington, DC

On behalf of the Defendant Charles Turner:

MS. JENIFER WICKS
Washington, DC

On behalf of the Defendant Russell Overton:

MR. MICHAEL ANTALICS
Washington, DC

* * *

[1884] Q. Okay. So when you testified on direct that Mr. Campbell was one of the people that gave you confidence in Mr. Alston's version of the events, that was based solely on this videotaped statement of Mr. Campbell?

A. In terms of Mr. Campbell?

Q. Yes.

A. Yes. Mr. Campbell gave us independent – again, an – a seventh or eighth version, a seventh or eighth time somebody who was not given any information by myself or by any of the police officers told us about the murder of Catherine Fuller and described the basic event in the same way: that there were people in the park, that they saw a victim, that they were singing about it, that they split up, that they went into the alley from different sides, that somebody grabbed her, that they beat her very badly, that they took her down in the garage, that they knocked her to the ground, that they grabbed her – dragged her into the garage, that – that somebody, and in all cases other than this one, it was Levi Rouse, took and inserted some kind of metal pole into her rectum and they left her there [1885] to die.

In those ways, Mr. Yarborough's original statement, Mr. Alston's videotaped statement, Mr. Yarborough's videotaped statement, Mr. Franklin's videotaped statement, Mr. – Mr. Montgomery's testimony to us, Mr. Webb who told us, Mr. Taylor who later told us, and in fact Mr. Bennett in his original statement and his grand jury, and Mr. Campbell, who was the least believable of all of them, all told us the same thing about the essential facts of this case.

And so to that extent, knowing that – that these were independently stated versions of what happened, knowing that I did not provide any of that information, nor did the police, given that most of these things happened in my presence, I believed this story. And in that way, to the extent that Mr. Campbell's version accorded with that, I believed it.

Did I believe he was being honest about everything? No. In all of the videotapes, I think every one of these people certainly minimize their own role in it, if not denied it.

* * *

[1936] Q. I believe you were asked, I don't recall which day [1937] it was, about the conversation overheard between Calvin – or the statement overheard Calvin making in a car. Do you recall those questions?

A. Yes.

Q. And I believe you were asked at some point whether only two of the people in the car confirmed that conversation. Do you recall being asked that question?

A. I do.

Q. And how many people confirmed the substance of the conversation in the car?

A. Well, two other than Miss Eleby confirmed hearing the conversation and repeated it in much the same way that Miss Eleby did. A number of the other people confirmed the – being in the car with the same people and hearing Carrie having a conversation with Calvin but not hearing the words.

Q. And were the two people that overheard – that corroborated the statement in substance known as Peebles and Petey?

A. Yeah. Sharon Harrison and Antoinette Clay.

Q. And do you recall whether or not they were named as Government witnesses for trial?

A. I believe they were.

* * *

[1949] SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CRIMINAL DIVISION

Criminal Action Nos.

1984 FEL 8612
1984 FEL 8616
1984 FEL 8614
1984 FEL 8615
1984 FEL 8617
1984 FEL 8513
1984 FEL 8613

UNITED STATES OF AMERICA

Plaintiff.

v.

CHRISTOPHER TURNER
KEVIN SMITH
LEVI ROUSE
CLIFTON YARBOROUGH
TIMOTHY CATLETT
CHARLES TURNER
RUSSELL OVERTON

Defendants.

Washington, DC
May 8, 2012

The above-entitled matter came on for motion before the Honorable Frederick Weisberg, Associate Judge, in Courtroom Number 202, commencing at 10:36 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS THE TESTIMONY AND PROCEEDINGS IN THE CASE AS REPORTED.

Kellie M. Humiston, RMR, CRR
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[1950] APPEARANCES:

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MR. LAUCKLAND NICHOLAS
Washington, DC

On behalf of the Defendant Charles Turner:

MS. JENIFER WICKS
Washington, DC

On behalf of the Defendant Russell Overton:

MR. MICHAEL ANTALICS
Washington, DC

* * *

[TESTIMONY OF ROBERT JEFFREY BEHM]

[1974] Q. I want to direct your attention to a woman by the name of Ammie Davis. Are you familiar with that name?

A. I am.

Q. When was your first contact with Ammie Davis?

A. I met – I called her Ammie, Ammie Davis. In early February of 1984 when I was a grand jury assistant. So the grand jury, what they did was they investigated and indicted all of the cases, all of the Felony 2's, all the Felony 1's, and then once they were indicted, they were sent to the trial division to be tried.

So normally the cases would come in, there would be an arrest, the officer would bring the case in, and you would do a grand jury investigation and you would either get an indictment or you wouldn't get an indictment. But sometimes cases came in as grand jury originals.

And there was a murder case that Homicide was investigating, Homicide of the MPD, of the Metropolitan Police Department. One of my grand jury supervisors told me that, you know, they had a witness who gave a statement, they were going [1975] to bring her up, and they wanted me to put her in the grand jury that day, and it was Ammie Davis.

So she was in custody on a – on a BRA misdemeanor. They brought her up. I read the statement. I went over

her statement with her and I put her into the – and then I put her in the grand jury.

Q. Did you – when you say you went over her statement, was that outside the presence of the grand jury?

A. Oh, yeah. Yeah. Sure. I met her in my – you know, I met her in my office. It was all pretty – it was all pretty fast, because they wanted to get her in the grand jury that day. So I put her in the grand jury that day. Do you – should I –

Q. Well, let me ask you this.

A. Okay.

Q. At the time that she had given that statement, did she identify anyone has having perpetrated the murder case that you were investigating?

A. Yes.

Q. And first of all, who was the decedent in that case?

A. His last name was Hider, H-I-D-E-R. I think his first name was David.

Q. And who did Miss Davis identify as the perpetrator of Mr. Hider's murder?

A. A guy named Tucson and a guy named Hog Head.

[1976] Q. And did she indicate whether or not any other individuals were involved with that murder?

A. She said there was a third person with them who she did not know. She said she was in an oil joint or – which – or some people call them shooting galleries, she called it an oil joint on 19th Street, and Hider came in there. And he was in there, and Tucson

and – came up with two guys and he – Tucson wanted money from him. He didn't have any money, and therefore, Tucson supposedly shot him.

The other two guys picked him up and they were carrying him out, and then she heard another shot. And she said they took him out. She – I don't know if she saw it or not, but in any event, she said they took him out and put him in a Trans – a Trans Am owned by Hog Head.

Q. Did she describe the oil joint or shooting gallery where this took place?

A. I don't know if she described it in the – in the grand jury or not, but ultimately she did. She said it was on 19th Street. And then ultimately she did a ride-by with some of the detectives, I think A.T. Johnson and maybe another detective who I wouldn't know, 5-D detective. And they went and did a ride-by, and she pointed out the house where this supposedly had occurred.

Q. Did there come a time where Ms. Davis identified the third person?

[1977] A. Yeah. See, so we had – I put her in the grand jury that day, she said she didn't know the third person. Then over the weekend, she called up the police and said that the third person was a guy named James Blue. They brought her back in the next week. And she said that she wasn't going to identify Blue, but he had threatened her over the weekend, threatened her because he knew she had been in the grand jury. And she said one of the grand jurors was from her neighborhood. She – a young woman, prob- – you know, maybe in her 20s and she had a bunch of sisters, and that she's sure that woman, you know, had – had given her name up and Blue knew it. He had

threatened her. So she wanted to come in and tell the truth about him, meaning, you know, she had lied the first time she'd been in the grand jury.

Q. What did you do with that information?

A. I think I probably put her back in the grand jury. That would have been the normal step to take. I believe I did do that.

I do recall talking to the grand juror who she said was from the neighborhood, and – and the woman was from that general area. I asked her, you know, if she knew Ammie Davis, and she said she didn't. And I said, well, I think it would be better if you didn't – if you didn't participate further in this – in this investigation. And she was kind of – she – she didn't really like that, but it was – you know, I explained [1978] to her it was the right – right thing to do, and she was okay and she didn't. So I do think I put – I do think I put Ammie Davis back in the grand jury, but I – I don't have an independent specific recollection of that.

Q. Did there come a time when Ammie Davis participated in a ride-along with police to identify the oil joint, or shooting gallery?

A. Yeah. I think it was right – I think it was right around that same time, she went out and they identified the shooting gallery. She pointed out a house. The officers came back. We got a search warrant for that house. We got an arrest warrant for James Blue. We had arrest warrants for the other two guys, too, Tucson and – and Hog Head. Tucson's name was James Oliver. I forget what Hog Head's name was. But I don't think those two guys, Tucson and Hog Head, got arrested until later on. But in any event, so they

arrest James Blue. His statement is, "I don't know what you're talking about."

And they go – then the detectives went out and did – executed the search warrant. And they hit a house, and there's, like, an older lady with her adult daughter, the house is impeccably kept and, you know, there's, you know, doilies on the chairs. And it clearly was not an oil joint. They were very nice. They took the detectives upstairs to the front room where this shooting supposedly happened. And the long and the short of it was it clearly was not an oil joint, had never been [1979] an oil joint, and it was – you know, no murder had occurred there. So – so –

Q. What did you do you with that information?

A. Well, I had great expectations that when they went there, they were going to – they were going to find what we were looking for. So they came in the next day, and I was totally surprised. And – but at that point, you know, I said – George Steele was the detective on the case, and I said, I mean, how – this – how can we have confidence in her, you know? First she goes in the grand jury and lies. Okay. That's not the most unusual thing in the world, but – when you're trying to protect somebody, but – but then this is her neighborhood. How can she pick the wrong house? You know, this is where she hung. This is where she shot heroin. How is she picking the wrong house?

Well, George thought, hey, look, you know, maybe she got cold feet. He had a lot of theories. We need to – you know, let's hang on to this and see if we can continue to investigate it and see, you know, if we can develop other evidence.

There was a guy named –

THE COURT: Did you have – excuse me, sir. I'm sorry to interrupt you. Did you have a body?

THE WITNESS: Oh, we had a body, yeah.

THE COURT: But no idea where he had been killed?

[1980] THE WITNESS: We – there was a blood trail from where he had been either shot originally or left, dumped behind Eastern High School, and it went out into the – into the street. And two guys were walking home in – in January from – they work – they worked somewhere for the Government. And they saw a body out in the street, and they went out, and he was bleeding. They thought he'd been hit by a car. He was still alive. And they – a girl came by, and she ran and called 911, or got – and the ambulance came. He was still alive. But – and he hadn't been hit by a car. He'd been shot once in the chest. And he died when they got him to the hospital.

THE COURT: Okay. I'm sorry to interrupt you, because you were in the middle of a thought.

THE WITNESS: No. That's fine. So I had – I had real significant doubts at that point about Ammie Davis.

I guess the other thing was, the other thing, after she said that Blue had threatened her, George Steele knew a guy who – who he – who was a man –

MR. NICHOLAS: Objection to what George Steele knew. I thought the question was to ask him what did he do, not what George knew –

MS. WESTON: I'll –

MR. NICHOLAS: – what did he do.

MS. WESTON: I'll ask a question.

THE WITNESS: Okay.

[1981] THE COURT: All right.

BY MS. WESTON:

Q. To your knowledge, did George Steele put Ammie Davis in protective custody at any point in that case?

A. Yes. After – after she said Blue had threatened her, it was my understanding that she was put in a motel managed by a guy who Steele knew and had used for that purpose on other occasions.

Q. And do you know how long she was in protective custody?

A. I think she was only there one night, because when Steele got to the grand jury the next morning, he – he was very upset. He was – he was really hot, because Ammie – it had been reported to him by the manager that Ammie had had a big party there and invited a lot of her – of her friends, and they were loud, they created a disturbance. The manager was angry at Steele.

And Steele came in, and he was upset with Ammie. And – and that was kind of unusual. I mean, George was a pretty calm, low-key kind of guy. He was – he was a smart guy, had gone to the Naval Academy for a couple of years and decided that wasn't for him, but he was – he was a bright guy and he usually wasn't overly emotional, and – but he was mad that day. It was kind of funny. You know, it was a little humorous to see him outside of character.

[1982] Q. Now, did you come to learn any information regarding Ammie Davis and her testimony against other individuals in any other cases?

A. Yeah, I did. I mean (pause) –

Q. When was that?

A. Well, okay. So all this stuff in the grand jury happened and – and the search all happened in the first half of February. I talked to my grand jury supervisors, told them about the problems, told them the detectives wanted to hang in there with this investigation.

But I had a guy, you know, he was locked up without bail, and it – it bothered me. That was one – that was a case that if you have 50 cases in your caseload, there's a couple you think about them and your stomach tightens up, and that was one of them for me. It worried me that I had this guy locked up and I wasn't sure at all whether our only witness was telling the truth. So I guess the other guys got locked up then, too.

Ultimately Ammie – I thought she had gotten in some more trouble and – and –

MR. SALZMAN: Object to what he thought.

THE WITNESS: Okay. Okay. At some point Ammie came forward and gave information to George Steele implicating another individual in a murder. And George –

MR. SALZMAN: Your Honor, object. Can we – can we approach?

[1983] THE COURT: All right. Would you mind stepping down for a second?

THE WITNESS: Yep.

(Bench conference commenced with Ms. Weston and Mr. Salzman)

MR. SALZMAN: Judge, the reason for my objection is that, and Ms. Weston may correct me, that there's additional information, but in discovery, we – there was included in Mr. Behm's affidavit an allegation that there was some other claim made by Amy (phonetic) Davis about another murder, not involving the Fuller murder, after the Hider murder. And we asked for information and discovery about that, and I have a discovery letter that says that there was no other information that they could find in their records.

So I don't know whether there's additional information that's been discovered, but if he – if it's based on his memory, I think, at least from discovery, his memory seems to be inaccurate. So at least that's the information that was –

MS. WESTON: Well, I –

THE COURT: I wouldn't –

MS. WESTON: I would object to that.

THE COURT: I wouldn't say the last point.

MS. WESTON: Yeah.

THE COURT: I wouldn't say the last point.

[1984] MS. SALZMAN: Well, but –

MS. WESTON: Just because there's no records of some things certainly, as we've learned in this case, does not mean someone's memory is inaccurate.

There was that discussion. We don't have any records to support it. I believe he can be cross-examined to the extent of the accuracy of his memory. I don't plan on going into length about this issue, but I think it goes to his state of mind as to what he was aware of at the time in making his determination.

THE COURT: Just so I understand the catalyst, it is in his affidavit that she gave this additional information?

MS. WESTON: Yes.

THE COURT: And the defendants – or the petitioners say, "What do you know about it? Is there anything to corroborate it?"

MS. WESTON: Correct.

THE COURT: And you said there's nothing.

MS. WESTON: We have not been able to find anything, no.

THE COURT: And there still isn't anything?

MS. WESTON: Correct.

THE COURT: I think he – I think if it's in his affidavit, he can talk about what he knew about it.

MR. SALZMAN: Okay.

[1985] THE COURT: That's fine.

MR. SALZMAN: I was just trying to find out if there was anything additional since –

THE COURT: I agree with you. If there were, and it wasn't turned over, I would be concerned.

MR. SALZMAN: Okay.

MS. WESTON: Thank you.

(Bench conference concluded)

BY MS. WESTON:

Q. I'll try to recall what my question was. I believe it was, were you aware of information regarding another allegation that Ammie Davis had made against another individual?

A. Well, yeah. Let me – let me – let me tell you. We dis- – I – at some point in April or May, I went to my grand jury supervisor, gave him some information, and he authorized me to dismiss the – the charges against the three – all those individuals, and they would be released from jail.

And the reason I did that, and the information that was given to me was George Steele came in and told me that Ammie Davis had recently implicated another individual in another murder, and that he had checked that out, and that the person who she had implicated in the murder was in the hospital on the day of the murder and that the testimony – that the evidence he gave her – that she gave him was, in his opinion, absolutely false, and he didn't want to proceed with the investigation [1986] anymore.

And I thought that was good. And I went and talked to my grand jury supervisor. I got the authorization to dismiss it, and I dismissed all the charges, based on her testimony.

Q. Now, did there come a time during your involvement with the Fuller case or in conjunction with the Fuller case that you again heard Ammie Davis's name?

A. Well, even before that, though, there were instances where Steele – Steele came and told me that Ammie Davis had made other allegations –

MR. SALZMAN: Objection. Again –

THE WITNESS: Okay.

MR. SALZMAN: If Mr. Steele is, you know, going to be a witness, that's one thing, but I think the issue is –

THE COURT: You don't intend to call him?

MS. WESTON: Again, that's within the affidavit, Your Honor.

THE COURT: Well, he can speak to it to the extent that he's already said it in his affidavit, because the defense already has that. Petitioners have that.

Go ahead.

THE WITNESS: Thanks. Well, there were other instances, and I don't remember the details, where Ammie Davis had given Steele or somebody in 5-D, who then gave it to Steele, information about James Blue that the detectives thought was not [1987] true. And Steele told me about it. And, you know, it was just basically saying, well, Ammie's blaming Blue, you know, for something else. So then –

MR. NICHOLAS: Could the witness –

MS. WESTON: Let me ask –

MR. NICHOLAS: Could the witness give us a date?

THE WITNESS: I can't – I can't give you a date, but it was being – I can't give you a date and I can't –

MR. NICHOLAS: Or the year?

THE COURT: When she gave the information or when he learned about it from Steele?

MR. NICHOLAS: Both. When he learned it from Steele.

THE WITNESS: It would have been between the spring of 1984 –

THE COURT: '85?

THE WITNESS: No. The spring of '84.

THE COURT: All right.

THE WITNESS: And before I became involved in the Fuller murder case.

BY MS. WESTON:

Q. And when was that that – again, just for the record?

A. In August of '85.

Q. Okay.

[1988] THE COURT: So it would be the – between the spring of '84 and maybe the spring of '85 or later?

THE WITNESS: Probably.

THE COURT: Okay.

THE WITNESS: In that period. That's all I – that's all the more specific I can be.

BY MS. WESTON:

Q. Did there come a time where you learned that Ammie Davis had told police that James Blue –

MR. NICHOLAS: Objection. Leading.

THE COURT: Overruled.

Q. – killed Mrs. Fuller?

A. I did.

Q. How did you learn that information, if you recall?

A. Somebody told me in my office that Sanchez wanted to see me, that there was, you know, a witness who said somebody else had – had killed Mrs. Fuller. So I went down to Jerry Goren's office and knocked on the door. Sanchez came to the door. He held the door open, but he stood in the entrance. And I – and he had asked about Ammie Davis.

I knew it was Ammie Davis who had come in. And I told Sanchez that Ammie Davis is wholly un-credible as a witness, and particularly involving James Blue; that there was a history there; that I thought she had lied to me in that investigation, and to the – and I – I'm confident I would have [1989] directed him to George Steele as well; and that she could not be believed.

Q. Do you know when that conversation took place?

A. I – I – I don't know exactly when it took place. I do know it took place at a time before I was well integrated into the Fuller murder trial team, because – when I went there, I – you know, I – I wasn't invited into Jerry's office. I still had my own office. And I didn't know Sanchez that well. That's all – that's – that's what I know.

Q. Do you recall whether or not you had a discussion directly with Jerry Goren about Ammie Davis?

A. I may have, but I don't have any specific recollection.

Q. Do you have any knowledge of whether Ammie Davis was put into a hotel or protective custody in relation to the Fuller case?

A. I have no knowledge of that.

Q. At some point did you learn that Ms. Davis was killed by James Blue?

A. Yes.

Q. How did you learn that information?

A. Well, I was on the Fuller trial team then, and they – I heard she had been shot and that Ruben

Sanchez went over and took a dying declaration from her in which she said James Blue had shot her. And I – I didn't think that was [1990] necessarily true, based on my – my prior experience with her.

MR. NICHOLAS: Objection to the opinion, Your Honor.

THE COURT: I'm sorry?

MR. NICHOLAS: Objection to his opinion. He testified –

THE COURT: Overruled.

A. I was told that there was no question about it. There were eyewitnesses.

Q. Did you have an opportunity to review the files relating to Ms. Davis's murder case?

A. Well, I'm sure I did at the time when they – when it came in, but I also have reviewed a portion of the MPD homicide file in connection with this hearing.

Q. And were you familiar with the facts surrounding that death?

A. I'm – I'm certainly familiar with them now. And I believe I was familiar with them then, but I don't have a specific recollection, you know, of actually looking at that file 25, 27 years ago. I'm confident I did, though.

Q. From your review of those files, was there any indication that Miss Davis had been killed because of her putting James Blue in the Fuller murder?

A. No, there wasn't. In fact, it really kind of supported the notion, you know, that she wasn't afraid of Blue at all, that they were –

[1991] MR. SALZMAN: Objection.

A. – dope using (pause) –

MR. SALZMAN: The record speaks for itself.

THE COURT: Yeah. Try not to give too much of your –

THE WITNESS: Okay.

THE COURT: – your own –

THE WITNESS: Okay.

THE COURT: – thoughts about it, but whatever you remember about what you observed and what you did based on it is fine.

THE WITNESS: Okay.

A. Well, the file – the eyewitnesses testified that Blue and Ammie Davis were acquaintances and sometimes did use heroin together, and that on the particular day in question, Blue didn't – didn't have any money, eventually got five bucks. Ammie had money and was going to buy some heroin. And Blue wasn't feeling good, I guess.

MR. SALZMAN: Objection to what he guesses.

MR. NICHOLAS: Objection, Your Honor.

THE WITNESS: That's what the witnesses said.

THE COURT: Go ahead.

A. And she said – he – she'd say, yeah, I'll let – I'll give you some of my heroin, and then a little bit later, she said, no, Blue, I don't think I will give you some heroin. [1992] Then she'd say, okay, maybe. And then it went back and forth.

And – and he eventually snapped and pulled out a gun and said, you don't – you don't think I'll shoot you,

do you? And she said, no, I don't, you MF. And he shot her.

Q. Do you know how that case concluded, whether it proceeded to trial or a guilty plea?

A. I know the homicide file indicates Blue came in and he initially said it was a – you know, the gun went off accidentally, shot her in the head and that – but he later pled guilty.

Q. Other than Ammie Davis, in your review of the files of the Fuller murder case, did you – were there any other indications that Mrs. Fuller was killed by one person?

A. No. It was in – I believed then and believe now it was –

MS. HOLT: Objection.

THE COURT: Overruled.

A. – that it was ver- – highly inconsistent with what the physical evidence showed, in particular the ME report.

Q. At the time that the case proceeded to trial, did you or the other members of the trial team believe that you had all the defendants who had committed the murder?

A. No. I didn't know, but I know that the detectives and Jerry did not feel that they had charged everybody who had participated in that murder.

[1993] MS. WESTON: Brief indulgence. One last thing.

Q. Mr. Behm, you indicated that in the Hider case, that that case bothered you and your stomach tightened, I believe you testified.

A. Right.

Q. Did you have any feelings like that with regard to the Fuller case?

A. No.

MS. WESTON: I have nothing further.

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